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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

VILLAGE OF RIDGEFIELD PARK, *et al.*,
Appellants,

vs.

BERGEN COUNTY BOARD OF TAXATION, *et al.*,
Appellees.

CONSOLIDATED WITH

CHARLES B. BLEASBY, County Treasurer
of the County of Bergen,
Appellees,

vs.

HAROLD J. JONES, Collector-Treasurer, *et al.*,
Appellants.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT.

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January 23, 1961

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IN THE

Supreme Court of the United States

OCTOBER TERM 1960

No.....

VILLAGE OF RIDGEFIELD PARK, a municipal corporation of the State of New Jersey; and BONITA W. VOGT, EDWARD EUCKER, DANIEL COLLINS, and RIDGEFIELD PARK AUTO SALES, INC., individually and as representatives of a class,

Appellants,

vs.

BERGEN COUNTY BOARD OF TAXATION; LOUIS A. D'AGOSTO, H. LEE MOSS and BENJAMIN GREEN as members of said Board; COUNTY OF BERGEN, a municipal corporation of the State of New Jersey; DR. CHARLES V. BLEASBY, Treasurer of the County of Bergen; LEONARD BAUM and WERNER J. BAARCK as Assessors of the Borough of Allendale; LOUIS R. CACACE, JOSEPH R. CARR and EDWARD L. BERRY as members of the Board of Assessment of the Borough of Alpine; FRANCIS R. ENGLEKE as Assessor of the Borough of Bergenfield; EDWIN C. LUDWIG as Assessor of the Borough of Bogota; THOMAS LAWLOR, WILLIAM DERMODY and OTTO LINKE as members of the Board of Assessment of the Borough of Carlstadt; FRANK E. SAFINO as Assessor of the Borough of Cliffside Park; HAROLD E. GILL as Assessor of the Borough of Closter; GEORGE L. GEIGER as Assessor of the Borough of Cresskill; PETER M. TINTLE as Assessor of the Borough of Demarest; RAYMOND ENGLISH as Assessor of the Borough of Dumont; FRED C. MYL, ALDINO LORENZI and JAMES MCKAY as members of the Board of Assessment of the Borough of East Paterson; JOHN ORR, NELSON M. EIGENRAUCH and ADAM BAMBACH as members of the Board of Assessment of the Borough of East Rutherford; OWEN J. SHEEHAN as Assessor of the Borough of Edgewater; JOSEPH A. SOLIMANDO as Assessor of the Borough of Emerson; RUSSEL T. WILSON as Assessor of the City of Englewood; AUGUST HERRMANN and ROBERT LA RAIA as Assessors of the Borough of Englewood Cliffs; MERLE R. ST. AMOUR as Assessor of the Borough of Fair Lawn; FRANK MANDRACCHIA, JOHN LA MARCA and ANGELO MAFFETONE as members of the Board of Assessment of the Borough of Fairview; PHILIP G. MAHLER as Assessor of the Borough of

Fort Lee; A. EDWARD DEBLOCK as Assessor of the Borough of Franklin Lakes; VINCENT J. SPALLUTO, STANLEY HALADYNA, BENJAMIN OLIVA and CHARLES BENIGNO as members of the Board of Assessment of the City of Garfield; THOMAS A. BREEN, SR. as Assessor of the Borough of Glen Rock; WILBUR H. LIND as Assessor of the City of Hackensack; R. C. GLASSPOOL, JOSEPH D. FAGAN, SR. and PAUL ALLEBORN as members of the Board of Assessment of the Borough of Harrington Park; CHARLES H. CLEMENT, ROBERT DAVIDSON, JR. and THEODORE L. VAN DAM as members of the Board of Assessment of the Borough of Hasbrouck Heights; CLINTON C. SIMMONS as Assessor of the Borough of Haworth; EDWARD A. REIS as Assessor of the Borough of Hillsdale; HENRY C. BUSCH as Assessor of the Borough of Ho-Ho-Kus; THOMAS HEMENWAY, FRANK W. BOGERT and WILLIAM S. MINGLE as members of the Board of Assessment of the Borough of Leonia; LOUIS SIMMEN, CHRISTOPHER ANDRES and WILLIAM KRIEGER as members of the Board of Assessment of the Borough of Little Ferry; FELIX SCIARRA, C. WILLIAM NUNNO and ANDREW ANTISTA as members of the Board of Assessment of the Borough of Lodi; ANGELO D. CHECKI, WALTER MOLLOY and EDWARD NOWEL as members of the Board of Assessment of the Township of Lyndhurst; JOSEPH B. KRUPINSKI as Assessor of the Township of Mahwah; C. ELMER WRIGHT, RAYMOND HOELZ and JOSEPH YAFCAK as members of the Board of Assessment of the Borough of Maywood; WILLIAM H. KOEHLER as Assessor of the Borough of Midland Park; JOHN W. LARSON as Assessor of the Borough of Montvale; JOHN BALDASTI, FRANK MIRACKY and WILLIAM NAGEL as members of the Board of Assessment of the Borough of Moonachie; LAWRENCE A. HARDY, JOSEPH TOTH and JOSEPH LEE as members of the Board of Assessment of the Borough of New Milford; FRED L. COBB, JR. as Assessor of the Borough of North Arlington; JOHN F. SILVA, ANTHONY MAGNANI and JOHN SCANLON as members of the Board of Assessment of the Borough of Northvale; CROFFORD C. HAYNES as Assessor of the Borough of Norwood; HERBERT M. WILLIAMS, JAMES MUNN and FRANK P. BOSNICK as members of the Board of Assessment of the Borough of Oakland; CLIFTON DEMAREST, JR. as Assessor of the Borough of Old Tappan; HENRY L. FENNER as Assessor of the Borough of Oradell; GEORGE DISS as Assessor of the Borough of Palisade Park; EVERETT G. MANNING as Assessor of the Borough of Paramus; GEORGE O. KIESSLING as Assessor of the Borough of Park Ridge; SAMUEL J. FULTON as Assessor of the Borough of Ramsey; LLOYD JONES as Assessor of the Borough of

Ridgefield; CLARENCE N. DELGADO as Assessor of the Village of Ridgewood; HARRY S. GREENE as Assessor of the Borough of River Edge; HAROLD ARCHIBALD as Assessor of the Township of Rivervale; GEORGE HAZLEY, HAROLD GRIFFIN and LORAIN BAUM as members of the Board of Assessment of the Township of Rochelle Park; GERTRUDE HUTCHEON as Assessor of the Borough of Rockleigh; SAMUEL E. TOPPING, JOHN P. FERRARO and C. OAKLAND AUSTIN as members of the Board of Assessment of the Borough of Rutherford; ANDREW MUNIAK, J. WILLIAM HARRINGTON and ANTHONY MOSCO as members of the Board of Assessment of the Township of Saddle Brook; ALBERT ZECHER as Assessor of the Borough of Saddle River; CHARLES S. PICARDI, EDWARD KLEKOWSKI and JAN TEN HOEVE as members of the Board of Assessment of the Township of South Hackensack; WILLIAM SENN as Assessor of the Township of Teaneck; CLAIRE M. YOUNG as Assessor of the Borough of Tenafly; LEON SITEK as Assessor of the Borough of Teterboro; CHARLES H. NUSSEAR as Assessor of the Borough of Upper Saddle River; BERNARD STRACOTE as Assessor of the Borough of Waldwick; PETER PAVLICK as Assessor of the Borough of Wallington; ORFEO CESAREO as Assessor of the Township of Washington; FRANK RUSSELL as Assessor of the Borough of Westwood; PAUL DATTOLI as Assessor of the Borough of Woodcliff Lake; JAMES C. KENNEDY as Assessor of the Borough of Wood-Ridge; and WILLIAM C. GREENHALGH as Assessor of the Township of Wyckoff,

Appellees.

Consolidated with

CHARLES B. BLEASBY, County Treasurer of the County of Bergen,

Appellee,

vs.

HAROLD J. JONES, Collector-Treasurer, and the Board of Commissioners of the Village of Ridgefield Park,

Appellants.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

JURISDICTIONAL STATEMENT.

The appellants appeal from the judgment of the Supreme Court of New Jersey entered on June 28, 1960, in which that

Court reversed and vacated the judgments of the Superior Court of New Jersey, Law Division, entered on April 29, 1960 and May 23, 1960, remanding the cause to the Law Division.

The Supreme Court of New Jersey is the highest state court available to the appellants. New Jersey Constitution, Article VI, Section II, Paragraph 2.

Pursuant to United States Supreme Court Rules 13(2) and 15, appellants file this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction of this appeal and should exercise such jurisdiction in this case.

Opinions Below.

The opinions of the Supreme Court of New Jersey, dated January 25, 1960 and June 28, 1960, are reported respectively at 31 N. J. 420, 157 A. 2d 829 and 33 N. J. 262, 163 A. 2d 144.

A copy of the opinions and judgments of the New Jersey Supreme Court are attached hereto as Appendix A.

The opinions of the Superior Court of New Jersey, Law Division, being the trial court, dated October 9, 1959, April 12, 1960 and June 7, 1960, are reported respectively at 57 N. J. Super. 316, 154 A. 2d 659, 61 N. J. Super. 170, 160 A. 2d 316 and 62 N. J. Super. 133, 162 A. 2d 132. The Law Division of the New Jersey Superior Court also entered orders and judgments, without written opinions but with findings of fact and conclusions of law, dated April 29, 1960 and May 23, 1960. Copies of opinions, judgments and orders of the Superior Court of New Jersey, Law Division, are attached hereto as Appendix B.

Jurisdiction.

On March 18, 1959, appellants, a municipal corporation of the State of New Jersey and individuals and corporate residents and taxpayers of the Village (both individually and as respresentatives of a class), instituted this action in the New Jersey Superior Court, Law Division. The suit challenged the failure of the Bergen County Board of Taxation to require all taxing districts within said County to assess at true value, the failure of the County Board of Taxation to equalize assessments and valuations among the seventy taxing districts involved, the failure of the County Tax Board to require any uniform rule of taxation, the apportionment of county taxes to the appellants by non-uniform standards and unequal rule and the allocation of an unfair share of the burden of county taxes to the appellants, all of which were contrary to the Constitutions of the United States and the State of New Jersey and the applicable statutes of New Jersey (N. J. S. A. 54:3-1 to 20; N. J. S. A. 54:4-1 to 74).

The Superior Court of New Jersey, Law Division, denied a motion for judgment on the pleadings on May 22, 1959, which determination was eventually upheld by the New Jersey Supreme Court on January 25, 1960, the cause being remanded for trial.

After trial, the Superior Court resolved all issues in favor of appellants on April 12, 1960, which decision was reversed by the New Jersey Supreme Court on June 28, 1960.

During the course of this litigation, Bergen County rendered two tax bills to the appellant Village of Ridgefield Park, which the Village refused to pay. Suit was instituted by the County Treasurer against the Village and its Tax

Collector, who by answer directly challenged the constitutionality under both the Federal and State Constitutions of the taxes imposed. That suit was consolidated with the original suit and resolved against appellants by the aforesaid reversal of the Supreme Court of New Jersey on June 28, 1960.

On September 22, 1960, appellants filed in the Superior Court of New Jersey, Law Division, the court possessed of the record, their Notice of Appeal to this Court.

The Law Division, on November 4, 1960, granted appellants' motion for an extension of time in which to file the record and docket this appeal, extending said time to January 31, 1961.

The jurisdiction of the Supreme Court to review the judgment of the Supreme Court of New Jersey is conferred by 28 U. S. C. §1257(2), 62 Stat. 929.

The following decisions sustain the jurisdiction of this Court to review the judgment of the Supreme Court of New Jersey on appeal in this case: *Winters* v. *New York*, 333 U. S. 507, 509 (1948); *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U. S. 69 (1946); *Charleston Federal Savings & Loan Assoc.* v. *Alderson*, 324 U. S. 182, 185 (1945) (dicta); *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282-3 (1932); *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282 (1921).

Should it be considered that this appeal was improvidently taken, this Court nevertheless has jurisdiction to review the judgment of the New Jersey Supreme Court by writ of certiorari pursuant to 28 U. S. C. §1257(3), 62 Stat. 929 and 28 U. S. C. §2103, 62 Stat. 962. The following recent decisions sustain the jurisdiction of this Court for such review: *Charleston Federal Savings & Loan Association* v. *Alderson*, 324 U. S. 182, 187 (1945); *Pennsylvania* v. *Philadelphia*, 353 U. S. 230 (1957).

Statutes and Constitutional Provisions Involved.

The provisions of the New Jersey statutes on taxation (N. J. S. A. 54:1-1 *et seq.*), the validity of which are drawn in question are: N. J. S. A. 54:3-13, 15, 17 to 19; N. J. S. A. 54:4-1, 12, 23, 41, 46 to 49. These statutes are set out at length in Appendix D.

The provision of the United States Constitution herein involved is Section 1 of the Fourteenth Amendment.

Questions Presented.

1. Is not taxation which is not by uniform rule nor equal violative of the provisions of the Fourteenth Amendment of the Constitution of the United States?

2. Must not a county tax be uniform throughout the territory to which it is applicable, and extend equally to all property subject to such taxation?

3. Are not New Jersey Statutes, as construed by the Supreme Court of New Jersey so as to require a county to allocate county taxes among the municipalities of the county by non-uniform rule and based upon unequal assessments unconstitutional under the provisions of the Fourteenth Amendment of the Constitution of the United States?

4. Is it not unconstitutional under the Fourteenth Amendment to the Constitution of the United States to deny to a municipality and the individual taxpayers representing approximately 5,000 taxpayers of that municipality an adjudication of unconstitutionality of the 1959 Bergen County tax levy of $192,912.58 upon the municipality and the taxpayers thereof, for the sole reason that supposed governmental chaos would result, thereby denying any effective remedy to these appellants to enforce their constitutional rights?

5. Is it not a deprivation of due process for the Supreme Court of the State of New Jersey to impose upon the appellant taxpayers the burden of proving the degree of unconstitutionality of the county tax levied in dollars?

6. May the appellants be denied their right to challenge the constitutionality of a county tax allocation by an adjudication that their exclusive remedy is by administrative review, when such administrative review body has no power to pass upon constitutional questions?

7. May an unconstitutional tax be collected?

Statement of the Case.

The Village of Ridgefield Park is a New Jersey community of about 13,000 population within the County of Bergen. It is one of 70 of Bergen County's municipalities. As of October 1, 1958, the assessor for the Village of Ridgefield Park, in compliance with the Constitution and statutes of the State of New Jersey, and the opinion of the Supreme Court of New Jersey in *Switz* v. *Middletown*, 23 N. J. 580, 130 A. 2d 15 (1957), assessed all property, both land and improvements, and personal property of all classes, at values which in his opinion constituted true values.

Thereafter, in compliance with the statutes, the original and tax duplicates bearing the assessed valuations were submitted to the Bergen County Board of Taxation by Ridgefield Park and the 69 other municipal taxing districts of Bergen County. This Board had the duty of equalizing the diverse assessed valuations of the 70 taxing districts in order to apportion the county tax burden equitably and fairly.

While the Bergen County Board of Taxation had in its possession all of the tax books of all of the municipalities,

a preliminary equalization table was issued indicating that the assessed valuations of *real* property and improvements of the Village of Ridgefield Park should be increased from their then assessed true valuations 401.76%. At the preliminary equalization hearing on January 26, 1959, the assessor for Ridgefield Park took a general exception to the actions of the Bergen County Board of Taxation with respect to their preliminary table of equalization.

Subsequently and on February 18, 1959, at the direction of the County Board of Taxation, a further equalization hearing was held at which time the Bergen County Board of Taxation refused point blank to hear or consider any evidence offered by the Village of Ridgefield Park with respect to the correction of the inequalities then existing in the assessment of all classes of *personal* property within the County, although at that time a formal offer of proof was made.

Thereafter, the County Board of Taxation, in reaching its final equalization table for *real* property, applied to all municipalities within the County of Bergen a certified sample sales formula based on sample sales for the *prior* two years as certified by the Director of the Division of Taxation of the State of New Jersey, but failed to apply this standard to the Village of Ridgefield Park, accepting in lieu thereof the true evaluations placed thereon by the local assessor.

This suit was then instituted on March 18, 1959.

Despite the institution of this suit, and totally ignoring its existence, the County Board of Taxation proceeded to adopt a final table of equalization based, not upon the application of a uniform standard, but upon the State sample sales standard applied to all municipalities but Ridgefield Park. Further, the Bergen County Board of Taxation, despite this suit and ignoring its institution,

failed, neglected and refused to take any action to adjust the differentials in the assessment of all classes of personal property, but knowingly accepted assessment of personal property from all other municipalities of Bergen County based upon assessments at fractional portions of the actual true values of such personal property.

The County Board of Taxation then threatened to adopt a table of aggregates (on the direct basis of which county taxes are apportioned) and include therein the improperly equalized real estate evaluations and the unadjusted personal property evaluations. Appellants applied for an interlocutory injunction to prohibit the County Board of Taxation from adopting the aforesaid table of aggregates based upon the improper evaluations. This motion was argued, and at the request of and with the consent of the State Attorney General on behalf of the County Board of Taxation, and the County counsel on behalf of the County, the application for injunctive relief was continued, without prejudice to the rights of the plaintiffs, until the trial of this action, by order of the Law Division of the Superior Court entered on May 11, 1959.

Thereafter, on May 14, 1959, application was made by the assessors of Oradell and Rockleigh for a Judgment on the Pleadings. This motion was returnable on May 22 and was argued in full and denied. The Attorney General made a similar motion which was also denied.

Informal application for leave to appeal on short telephone notice was made to the Appellate Division of the Superior Court on Monday, May 25, 1959, at which time the Appellate Division, without hearing the application on its merits, stayed the trial set down by the Law Division from June 1 until June 8, 1959, and ordered that the applying parties file briefs by Thursday, May 28, and answering briefs be served and filed by Wednesday, June 3, 1959, and

that the matter be argued before the Appellate Division on June 8, 1959.

After argument, the Appellate Division granted the applying parties leave to appeal. Notices of Appeal were thereafter served and filed on behalf of both Oradell and Rockleigh, and the Bergen County Board of Taxation. None were served on behalf of any of the other parties to this action. Briefs were served and filed by Oradell and Rockleigh on June 30, 1959 (joined in by North Arlington, East Paterson and Riverdale), and by the Attorney General on behalf of the Bergen County Board of Taxation on August 31, 1959.

Thereafter, these appellants applied to the Supreme Court of New Jersey for Certification, which was granted on October 5, 1959. The matter was argued before that Court on November 10 and 23, 1959, and decided January 25, 1960. That Court affirmed the Law Division's denial of motions for Judgment on the Pleadings, held that the appellants had stated a cause of action which, if proved, would establish discriminatory taxation, and remanded the cause to the Law Division for hearing and disposition in accordance with its opinion (Appendix A, pp. 1a to 11a).

Thereafter the matter was set down for trial, which trial lasted one full month—from February 29 to March 28, 1960.

On April 12, 1960, the Law Division of the Superior Court filed its opinion in which it held that the assessments being by non-uniform standards improperly equalized rendered the tax unconstitutional and uncollectible (Appendix B, pp. 26a to 76a). On April 29, 1960, on due notice to all parties, final judgment on that portion of the case relating to the County allocation of taxes to the Village of Ridgefield Park was entered (Appendix B, pp. 90a to 91a). On the same day, these appellants were served with a notice of Petition for Certification. On June 6, 1960, Certification

was granted by the order of the Supreme Court of New Jersey, with the direction that the parties were to exchange and file briefs by June 10, 1960, and setting the matter down for argument on June 13, 1960. Generally, each side is given 30 days in which to serve and file briefs.

During the course of the aforesaid litigation, as above noted, the County of Bergen rendered to the Village of Ridgefield Park two 1959 tax bills encompassing the allocation of County taxes to said taxing district which were under direct challenge in this litigation. The Village of Ridgefield Park refused to pay these taxes. Suit was instituted by the County Treasurer against the Tax Collector and the Board of Commissioners of the Village of Ridgefield Park on August 14, 1959, to compel the Village to pay these taxes to the County. Answer was filed by the Village challenging directly the constitutionality, both under the State and Federal Constitutions, of this County tax. A motion was made by the County Treasurer to strike the answer and enter judgment on the complaint. This was argued in full and denied (Appendix B, pp. 92a to 93a). From this decision the County Treasurer appealed to the Appellate Division. A motion was made by the Village to dismiss the appeal and the Appellate Division granted the same. A Petition for Certification was then filed by the County Treasurer. The New Jersey Supreme Court granted the Petition on February 15, 1960, and remanded the case to the Law Division with leave for the County Treasurer to apply for the funds which had been deposited in the interim with the Court. On March 7, 1960, the Law Division entered its order directing the Clerk of the Superior Court to pay to the County Treasurer the tax monies deposited with him, without prejudice to any rights in connection therewith which the Village might thereafter establish.

Thereafter, on May 23, 1960, and subsequent to the entry of the judgment of the Law Division of the Superior Court in *Village of Ridgefield Park, et al.* v. *Bergen County Board of Taxation, et al.*, the Law Division entered its judgment in the companion case of *Bleasby* v. *Jones*, dismissing the complaint of the plaintiff therein and entering judgment on the affirmative defenses and counterclaim in favor of the Village and consolidating that matter with this litigation (Appendix B, pp. 92a-93a to 95a).

On June 7, 1960, the Law Division entered its opinion on the mandamus phase of the case, ordering, properly and in accordance with the decision of the New Jersey Supreme Court, that the Board in the future equalize the assessed value of all taxable real and personal property of Bergen County and further ordering the Board to do everything necessary to secure taxation in the future equally and at true value (Appendix B, pp. 77a to 89a).

Having heard argument, as noted, on June 13, 1960, and having before it the April 12, 1960 action of the Law Division and the October 9, 1959 decision in the companion *Bleasby* v. *Jones* case (but not considering the June 7, 1960 decision above-referred to), the Supreme Court of New Jersey reversed the Law Division insofar as it had held the equalization table and county tax apportionment unconstitutional for 1959 and had further ordered a refund to Ridgefield Park of the unconstitutionally collected tax. The sole reason given for reversal was that government must function and must therefore have funds—legally or illegally collected. The only alleged remedy offered appellants was to prove the amount of any tax overcharge due to the unconstitutionality, and seek a credit in future years—regardless of a virtually unsurmountable burden and regardless of the fact that future and different tax payers would profit from the tax excess (Appendix A, pp. 12a to 16a).

The Questions Presented Are Substantial.

Introduction.

The applicable New Jersey statutes dealing with assessment and apportionment of county taxes, as construed by the New Jersey Supreme Court, have been held to require assessment of all classes of property at true value. However, a long history of failure to comply therewith is necessary background to this cause, but will not be here detailed.

In the allocation of the burden of county taxation, especially in the absence of enforcement of true (and therefore equal) assessment by the assessors of each taxing district, the County Board of Taxation (hereinafter "Board") is required by law to establish a table of equalization. Under this scheme, the Board computes, on the basis of state-certified sample sales for two preceding years, the actual fractional percentage of true value at which each local district is assessing. The Board then multiplies the assessment of each district by an appropriate factor in order to "equalize" assessment valuations between and among the local taxing districts (of which Ridgefield Park is one).

Having equalized, and aggregating real and personal property, the Board apportions the county tax burden among the municipalities on the basis of its share of the entire assessed value of all districts in the county.

In 1957, the Supreme Court of New Jersey held that "true value", as required by statute, meant just that, and that mandamus would lie to achieve true value assessment (but delayed enforcement two years to enable the Legislature to take some action to correct the malfunctions, which it had not done by the time this suit was instituted).

Having completed, thereafter, a complete re-evaluation, appellant, Ridgefield Park, assessed all property—real and

personal—at true value for the 1959 tax year. It was the only municipality within Bergen County to so comply with the law.

The true value assessments for 1959 were submitted to the Board as required by law. The Board, however, failed and refused to equalize the Ridgefield Park real property assessments along with the others, all of whom assessed at ratios of less than true value, ranging from 15.30% to 59.10%. Ridgefield Park, had the Board properly functioned, would have been found to have assessed in the vicinity of 107.35% of true value. In so acting, the Board caused a larger share than proper of the cost of county government to be imposed upon appellants.

In addition, compounding the error, the Board—with the judicial approval of the New Jersey Supreme Court—held that no equalization or attempted equalization was necessary in personal property, where admitted ratios of assessment varied from 7% to 25%, except for Ridgefield Park at approximate true value.

In sum, the Board compiled a table of aggregates on the basis of which county taxes would be apportioned among the 70 municipal taxing districts; however, the table included an equalized assessment on realty for all taxing districts *except* appellant Ridgefield Park (the only true value assessment) and non-equalized assessments on personalty, however submitted by each district's assessor (admittedly ranging from 7% of true value to true value).

The result: taxation by non-uniform standards and unequally apportioned despite two Constitutions requiring uniformity and equality.

I.

The New Jersey Statutes relating to the imposition and apportionment of the county tax burden, as construed and applied, are unconstitutional as violative of the Fourteenth Amendment of the United States Constitution.

The law has long been settled that local taxation must be equal and uniform if it is not to infringe the requirements of the Fourteenth Amendment; there is a plain right to equal treatment. *Hillsborough Township* v. *Cromwell*, 326 U. S. 620 (1946); *Charleston Federal Savings & Loan Ass'n* v. *Aldersen*, 324 U. S. 182 (1945); *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239 (1931); *Sioux City Bridge Company* vs. *Dakota County*, 260 U. S. 441 (1922).

In New Jersey, however, the applicable statutes, as construed,[1] require: (a) clear and intentional discrimination between the assessment of personal property of the appellants and the 69 other taxing districts of Bergen County and (b) clear and intentional discrimination in the assessment of realty of the appellants and the remaining taxing districts of Bergen County.

A. The New Jersey statutes, as construed, require clear and intentional discrimination between personal property assessments of appellants' property and others.

As noted above, the New Jersey statutes provide first, that each assessor in each tax district assess personalty at true value (N. J. S. A. 54:4-1, 12; *Switz* v. *Middletown Township*, 23 N. J. 580 (1957)); the tax assessment lists

[1] The interpretation of the New Jersey statutes by the New Jersey Supreme Court fixes the meaning of the statutes "as definitely as if [they] had been so amended by the legislature." *Winters* v. *New York*, 333 U. S. 507, 514 (1948), and cases cited therein; see also *Smiley* v. *Kansas*, 196 U. S. 447, 455 (1905).

must then be filed with the county board (N. J. S. A. 54:4-35). The county board may then, "after investigation, revise, correct and equalize the assessed value of *all* property in the respective taxing districts, increase or decrease the assessed value of *any* property not truly valued * * * and in general do everything necessary for the taxation of all property in the county equally and at its true value" (N. J. S. A. 54:4-47, emphasis added).[2]

The county board then should prepare a table of equalization for realty (see below at Part B), which, when taken with the corrected and equalized personal property assessments, should be used to determine the total true value of all taxable property in the county and the total true value of all taxable property in each taxing district in the county, on the basis of which totals the amounts needed by the county to function (N. J. S. A. 54:4-41) are apportioned among the tax districts. N. J. S. A. 54:4-48, 49.[3]

Now, it is obvious that if taxation in and of the county is to be equal and uniform, the assessors of each district must fairly assess all taxable personalty at true value (or equal ratios thereof) *or* that the county board must fairly equalize the personal property assessments. Otherwise, the ultimate apportionment will never be uniformly and equitably made.

It is conceded that the assessors of the Bergen County taxing districts did not assess personalty at true value or any similar part thereof. Indeed, one assessor testified he assessed at 7% of true value, another at 10%, another at 13%, another at 25% and so on. Only appellant Ridgefield Park admittedly assessed personalty at true value.

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[2] This section should be read together with N. J. S. A. 54:3-13 requiring the county board to "secure the taxation of all property in the county at its true value; in order that all property * * * shall bear its full, equal and just share of taxes."

[3] The procedure relative to railroad property, being immaterial to this case, is not discussed.

It is further an established fact that the Bergen County Board of Taxation made *no* effort to correct or equalize the personal property assessments in compating the table of aggregates on which apportionment is based.

And, the statute, as construed, although contrary to its obvious "original" wording and intent, *requires* the county board to accept the personal property assessments as submitted by each assessor *without equalization* of any kind in allocating the cost of county government.[4]

Clearly, statutes requiring discrimination in taxation must fall as violative of the equal protection provision of the Fourteenth Amendment.

B. The New Jersey Statutes, as construed, permit discrimination between the real property assessments of appellants' and others.

Generally speaking, the assessment and apportionment procedure outlined under Part A with respect to personalty is equally applicable to real property.

Thus, the local assessor files his alleged true value assessments with the Board; the Board members, after mandatory investigation and inspection (N. J. S. A. 54:3-15), a step never made in fact, are to determine the "percentage of full value at which the real property of each taxing district is assessed" and prepare "an equalization table showing the assessed valuation of the real property in each district" and "the ratio or percentage, if any, by which the assessed valuation should be increased or decreased in order to correspond to true value" (N. J. S. A. 54:3-17, 19).

The assessed valuations, as supposedly equalized, are added to the personalty values, as required to be unequal

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[4] See decision below of New Jersey Supreme Court, at p. 431 of 31 N. J., p. 837 of 157 A. 2d. See also *City of Passaic* v. *Passaic County Board of Taxation*, 31 N. J. 413, 157 A. 2d 825, decided the same day (Appendix C).

and discriminatory, and the result is the non-uniform and unequal basis on which the county taxes are apportioned.

In this instance, appellant Ridgefield Park was the sole district in Bergen County to assess at undisputed true value. The Bergen County Tax Board, however, refused and failed to apply the equalization process to appellant despite employing equalization steps to each of the other 69 districts. Had the process been used, it would have resulted in a reduction of the assessment, since Ridgefield Park was at approximately 107.35 percent of true value. As a result, more of the county tax load than was legal and proper was apportioned to appellants.

C. In sum, the statutes of New Jersey establishing county boards of taxation and providing for apportionment of county taxes, as construed, are unconstitutional.

The Legislature of New Jersey has statutorily created county boards of taxation. N. J. S. A. 54:3-1. The boards *appear* to have been charged with securing true value taxation of *all* property within the county in order to achieve "full, equal and just" taxation. N. J. S. A. 54:3-13, 15. The board is charged with equalizing the submitted assessments, to this end, and apportioning the county tax burden accordingly. N. J. S. A. 54:3-17 to 19; N. J. S. A. 54:4-1, 12, 23, 35, 41, 46 to 49.

However, as these statutes must now be read,[5] for the 1959 tax year, the assessors of each district need not have assessed at true value, the county board could not do anything but accept the widely and wildly fluctuating personal property assessments for each district and could not have equalized the personalty assessments in computing the allocation and apportionment of the county tax burden. Further, the county tax board need not have equalized the

[5] See footnote 1, *supra*.

assessment of one of the 70 districts, appellant Ridgefield Park.

The statutes, accordingly, as construed, are nugatory, being violative of the Fourteenth Amendment of the United States Constitution.

II.

Unconstitutional statutes are void *ab initio;* no action may be validly taken under such enactments so that an unconstitutional tax may not be collected.

Although appellants did pay their share of the county tax burden, the transfer of funds was made first into court, then on court order to the County Treasurer—all without prejudice and without waiving any rights. However, despite the unconstitutionality of the statutes through which the taxes were levied, appellants have been denied their money.

An unconstitutional statute is a nullity; "it imposes no duties." *Norton* v. *Shelby County,* 118 U. S. 425, 442 (1886).

Thus, the New Jersey statutes under which the county tax burden was apportioned to appellants, being unconstitutional, are "as inoperative as though [they] had never been passed." *Norton* v. *Shelby County, supra.*

A political subdivision of a state has no right to impose or collect an unconstitutional tax. *City of Topeka* v. *Boyd, County Treasurer,* 127 Kan. 202, 272 Pac. 124 (Sup. Ct. 1928). Hence, Bergen County could not legally collect the tax from appellants, there being no statutory basis therefor. It is no answer for the Supreme Court of New Jersey, at this point, to say in effect that the taxpayer must prove what he should have been taxed if the legislature had passed valid acts and to be refunded only the excess of the funds held by the county without prejudice under court order.

III.

Taxation by non-uniform rule, unequally imposed, is unconstitutional, and effective remedies to prevent or correct such taxation must be available.

A sample of cases has already been cited establishing the necessity for equal and uniform taxation.

Assuming *ex arguendo*, that the statutes are constitutional, but that their improper administration has resulted in the admitted over-assessment, it is submitted that the alleged remedy offered by the New Jersey Supreme Court is insufficient and denies appellants their federally created rights. *Cf. Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, 281 U. S. 673, 680 (1930).

First, appellants have been denied an adjudication of unconstitutionality of the taxing statutes solely upon the ground that government must function and to that end must have funds. The statement is a monstrous illogic: only *constitutional* government should function. Private rights and private property must not be expropriated on grounds of expediency. It is the duty of government to protect civil liberties, not to abrogate them on its own behalf; it is the further duty of the judiciary to uphold these rights. See, *e.g.*, *Marbury* v. *Madison*, 1 Cranch. 137 (1803); *Fairbanks* v. *United States*, 181 U. S. 283 (1901).

Second, appellants have been denied any effective protection of their substantive rights under the Federal Constitution by limiting their remedy to administrative procedures, when the administrative body has no jurisdiction to adjudicate unconstitutionality. See *Hillsborough Township* v. *Cromwell*, 326 U. S. 620, 625 and the cases cited therein at fn. 3 (1946); *cf. Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, *supra*.

Third, the Supreme Court of New Jersey gave appellants nominal relief for the tax year 1959 by stating that they might have a credit in *future* years in an amount equal to the *excess they established* of the share which should have been constitutionally assessed.

Whether these appellants derive relief for unconstitutional taxes by a credit given to future, and perhaps other, taxpayers is problematical.

Additionally, the New Jersey Supreme Court has placed an insurmountable burden of proof upon appellants, amounting to effective denial of any remedy. Thus, in the one factor of personal property assessment, the appellants would have to prove the true value of all personal property within the County of Bergen in all 70 municipal taxing districts. This could not be done. It should have been the work of the other 69 tax assessors and taxing districts, as the statutes originally required; it should have been the work of the County Board of Taxation, prior to the decision of the New Jersey Court that the Board could not adjust and equalize.

The Supreme Court of New Jersey, then, has denied an adjudication of unconstitutionality of tax statutes and assessments fearing "chaos"; it has left appellants to the mercy of administrative boards which have neither the jurisdiction nor the competence to determine constitutional issues; it has denied a refund of unconstitutionally collected (paid under court order without prejudice) taxes; and it has foisted onto appellants, not only the tax assessors' and County Board's duty, but also a burden of proof which may never be met.

See *Hillsborough Township* v. *Cromwell*, 326 U. S. 620 (1946); *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U. S. 239 (1931); *Carpenter* v. *Shaw*, 280 U. S. 363 (1929); *Sioux*

City Bridge v. *Dakota County*, 260 U. S. 441 (1923); *Ward* v. *Love County*, 253 U. S. 17 (1920); *Central of Georgia Ry.* v. *Wright*, 207 U. S. 127 (1907).

Conclusion.

The questions presented by this appeal are substantial and of widespread public importance. It is respectfully submitted that this Court should note probable jurisdiction.

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APPENDIX A.

Opinions of Supreme Court of New Jersey.

SUPREME COURT OF NEW JERSEY.

VILLAGE OF RIDGEFIELD PARK, a Municipal Corporation of the State of New Jersey, *et als.*,

Plaintiffs-Respondents,

v.

BERGEN COUNTY BOARD OF TAXATION, *et als.*,

Defendants-Appellants.

Argued November 10, 23, 1959—Decided January 25, 1960.

On appeal from the Superior Court, Law Division.

Mr. JAMES A. MAJOR argued the cause for defendants-appellants, Fenner and Hutcheon (Mr. EVERETT I. SMITH, attorney; Mr. JAMES A. MAJOR, of counsel).

Mr. THEODORE I. BOTTER, Deputy Attorney General, argued the cause for defendant-appellant, Bergen County Board of Taxation (Mr. DAVID D. FURMAN, Attorney General, attorney).

Mr. WILLIAM R. MORRISON argued the cause for plaintiffs-respondents (Messrs. MORRISON, LLOYD & GRIGGS, attorneys).

The opinion of the court was delivered by WEINTRAUB, C. J.

The Village of Ridgefield Park and several of its taxpayers filed a complaint in lieu of prerogative writs against the Bergen County Board of Taxation and the assessors of

each of the other municipalities in Bergen County, seeking certain relief with respect to the assessment of real and personal property. Some of the assessors moved for judgment on the pleadings, and so also did the county board. Their motions were denied. The Appellate Division granted leave to appeal from the interlocutory orders, and prior to hearing thereon we certified the matter on motion.

Plaintiffs allege that in the Village of Ridgefield Park all real and personal properties were assessed at true value for the year 1959, but the county board and the defendant assessors have "wilfully, deliberately and intentionally failed, neglected and refused to perform their duties and obligations" to achieve the same treatment of property in the remaining municipalities of the county. This allegation must of course be accepted as true on a motion addressed to the face of the pleadings. Plaintiffs seek to compel compliance for the year 1959 and thereafter, and also a restraint against collection from the Village of Ridgefield Park of an amount in excess of what its fair share of the cost of county government would be upon the assessment of all real and personal property at true value.

I.

It is urged that (1) the issuance of a *mandamus* would be contrary to the public interest and (2) plaintiffs should be remitted to an administrative remedy.

Both propositions were presented in *Switz* v. *Middletown Township*, 23 N. J. 580 (1957). There is no point in traversing again the ground fully explored in that case. Succinctly, the situation is this: The Constitution of 1947 provides in Article VIII, Section 1, paragraph 1:

> "Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such

real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district."

The Constitution does not require that all real property taxed locally or for local use shall be assessed at true value. Rather it requires all such real property to be assessed "according to the same standard of value," which may be a percentage of true value. But the statute, N. J. S. A. 54:4-1, provides that unless exempted it shall be subject to taxation "at its true value." The Constitution does not require that all personal property shall be taxed or that personal property, if taxed, shall be assessed at true value. But, again, the statute just cited provides that all taxable tangible personal property shall be assessed "at its true value." See also R. S. 54:3-13 and N. J. S. A. 54:3-22; N. J. S. A. 54:4-12, 23, 47.

In *Switz* we discussed the long history of widespread failure to comply with the legislative mandate. We had before us and decided the question whether the court could properly look the other way. We agreed we could not. It is the singular situation of the judiciary that issues before it must be met and decided when presented. In this forum, action is inescapable for a court necessarily acts whether it grants or denies relief. Either course affirmatively disposes of the right asserted.

In *Switz* a majority of the court concluded the issuance of *mandamus* to achieve assessment at true value should there be delayed for a period of two years. The manifold problems directly and tangentially involved were weighed, and because of them the right of the plaintiff to relief was suspended for the stated period to the end that the Legislature would have an adequate opportunity to explore the subject. More than two years have elapsed and we assume the necessary facts are on hand for such action by the Legislature as it may find to be in the public interest. In the circumstances, we may not delay the right of plaintiffs to

enforcement of the existing statutory policy and thus leave their interests to miscellaneous policies allegedly pursued locally without constitutional or statutory authorization.

As stated above, defendants urge the administrative remedy is adequate and must be exhausted before recourse is had to the judicial forum. There are two aspects: the administrative remedy available (a) to review or revise assessments of taxable property and (b) to review the apportionment made by the county board of the cost of county government for the year 1959.

With respect to the first, it is sufficient to say that the statutory right to equal treatment cannot effectively be achieved by an appeal to supervisory statutory agencies or by a multitude of petitions to raise the properties of others to full true value. This view was expressed by the Appellate Division in *Switz* upon a full discussion of the subject, 40 N. J. Super. 217, 225 (1956), and our decision in that case rests upon that premise. Hence plaintiffs, upon establishing the allegations of their complaint, would be entitled to a judgment directing the several assessors to proceed expeditiously to assess all taxable property in accordance with the statute, that is to say, at true value as the assessor in good faith finds it to be. If it should appear that plaintiff municipality has thus sought in good faith to assess real and personal property at full true value but has failed in some remediable particular to achieve its aim, it may be required to remedy the shortcoming as a condition for relief, contemporaneously with compliance by the defendants with the judgment. The relief ultimately granted cannot, however, relate retroactively to individual assessments as to which the time for appeal by the owners has already expired. They are not parties to this proceeding. Moreover, retroactive reassessments of all property would entail disorder hurtful to the public interest. That relief accordingly should relate to such future assessment date as the trial court shall find to be feasible and fair in the light of the facts. At the argument before us, it was suggested that failure to assess

at full true value was admitted in answers to interrogatories. They are not in the record before us. If at any stage of the proceedings it should be conceded that a party has so failed, the court in its discretion may make an *interim* order directing any necessary revaluation process to begin, since the resulting data will ultimately be needed to achieve compliance with the statute.

Defendants correctly challenge plaintiffs' attempt to attack directly in these proceedings the equalization table (R. S. 54:3-17 to 19), the apportionment valuation (N. J. S. A. 54:4-49), and the table of aggregates (N. J. S. A. 54:4-52) made and prepared by the county board for the purpose of allocating the cost of county government for the year 1959 and to restrain the collection of taxes for that year. The reason is not the adequacy of an administrative review to reach the basic vice of unequal assessments of the underlying individual properties. An administrative review of the county board's work is no more adequate to that end than are the other administrative procedures to which we referred above in reaching the conclusion that a *mandamus* may issue without prior recourse to them. Rather the compelling reason is that government must function and to that end must have funds. It would be quite extraordinary to enjoin in a wholesale fashion the assessment or collection of taxes where the properties are lawfully taxable and the infirmity is claimed to reside in the valuation process. See in general, 51 Am. Jur., Taxation, §1218, p. 1039. This essential public policy is reflected in N. J. S. A. 54:2-37, which provides that the review of the county equalization table by the Division of Tax Appeals "shall not suspend the apportionment of moneys or collection of taxes." The remedy for the alleged inequity cannot be one which will deny the public the vital services it needs. The question of a subsequent credit either under statute or judicial principle is of course another matter.

II.

In *Switz* plaintiff sought equal treatment of real property within the municipality in which she was a taxpayer. Defendants here urge that the principle of *Switz* is not applicable to an action by taxpayers of one municipality to compel compliance with the statute in the other municipalities of the county as to either real property or personal property.

With respect to real property, defendants contend the equalization of the aggregates thereof insures equality of treatment as among the municipalities of the county. It is true that practical equality (somewhat short of the ideal; see *City of Passaic* v. *Passaic County Board of Taxation*, 18 N. J. 371, 381 (1955)) is thereby achieved with respect to the *pro rata* allocation of the county burden among the municipalities as such. And if a municipality assessed its real property uniformly at some percentage of true value, such assessment plus the equalization process would achieve substantial equality among all of the individual taxpayers of that municipality with respect to the burden of county government. But unless all municipalities thus deal equally with all real property within their borders, there is discriminatory treatment as among the individual taxpayers of the county with respect to the burden of county government which the equalization process does not correct. This was recognized in *Switz*.

In *Switz*, Mr. Justice Heher said (23 N. J., at page 599):

> "* * * And we allude again to the element of inequality attending the fulfillment of the judicial mandate in but one municipality of the county, and the obvious need of joint action under the one standard by all such municipalities when the time arrives, requiring that they be made parties to the action, if need be to secure the requisite uniformity."

The concurring opinion stated (23 N. J., at pages 609-610):

"It seems clear to me that all of the taxpayers of a county are entitled to equal treatment with respect to the distribution of the cost of county government. Distribution among municipalities on the basis of equalization of aggregates of their respective ratables accomplishes a proper allocation of that cost as among the municipalities, and if equalization of the assessments within the Township of Middletown were achieved, each taxpayer of the township would bear his proper share of the cost of county government as against other taxpayers of the township. But, so far as the tax for county purposes is concerned, each taxpayer is entitled to equality, not merely as against other taxpayers within his own municipality, but also as against all other taxpayers of the county. It is no answer to say that the taxpayer is paying no more than his just share. He is entitled to enforcement of the legislative scheme that all taxable property be taxed equally for the purposes of county government. Just as plaintiff's right to such enforcement of the public duty within her township should be recognized whether she is bearing more or less than the share of the cost of local government which would be hers if the statute were complied with, so also there must be recognized the right of the owner of any property taxed for county purposes to seek enforcement of the statutory scheme for equality as among all amenable to taxation for county purposes. *Driscoll* v. *Burlington-Bristol Bridge Co.*, 8 N. J. 433, 476 (1952); *Garrou* v. *Teaneck Tryon Co.*, 11 N. J. 294, 302 (1953); *Koch* v. *Borough of Seaside Heights*, 40 N. J. Super. 86, 93 (App. Div. 1956), affirmed 22 N. J. 218 (1956); *Haines* v. *Burlington County Bridge Commission*, 1 N. J. Super. 163, 171 (App. Div. 1949).

If the county tax were separately levied by the county itself, the right of each taxpayer to seek

> enforcement of the statutory scheme throughout the county would be apparent. If the county tax were thus directly distributed by county assessments ranging, let us say, from 3.08% to 80%, a taxpayer would not be denied the right to enforce the public duty merely because he happened to be paying the same number of tax dollars he would pay if uniformity had been achieved. If I am correct in this premise, then the right of a taxpayer of Middletown to relief as to the entire county with respect to the tax for county purposes should not be obscured and denied by the circumstance that the county tax is levied *via* municipalities and local assessors rather than directly by the county itself."

It may be added that N. J. S. A. 54:3-21 recognizes that a taxpayer's interest is not solely intramunicipal, for it authorizes him to appeal if he feels "that he is discriminated against by the assessed valuation of other property in the county."

The views expressed above apply with equal force to personal property. In *Switz*, Mr. Justice Heher said (23 N. J., at page 599):

> "And the local authorities are admonished that the current assessment statutes, *ante*, place real and personal property in the one category, to be assessed at 'true value.' The assessment of real property at full value and tangible personal property at less would violate the statutory rule of equality. * * *"

The concurring opinion said in the same vein (23 N. J., at page 611):

> "The statute calls for like treatment of both real and personal property. It is of no moment that the Legislature may constitutionally differentiate

between the two. The Legislature has not, and the provision for true value as to which enforcement is sought appears only in the statute. In short, if mandamus is granted to compel assessment at true value, it will be the statute, not the Constitution, which is being enforced."

There is still another consideration peculiarly applicable to personalty which is itself sufficient to require the same conclusion. As we have this day decided, *City of Passaic* v. *Passaic County Board of Taxation*, 31 N. J. 413, in allocating the cost of county government the county board is required to accept the aggregates of personal property without equalization thereof. The taxpayers of a municipality which understates the total value of its taxable personal property thus profits at the expense of the taxpayers of other municipalities. The sole feasible remedy for that inequality is to compel the local assessors to obey the legislative will and to utilize the legislatively prescribed techniques to ascertain the amount and value of such property. R. S. 54:4-12 *et seq.*

It is urged that assessment of personal property at true value would be unpalatable. Perhaps so; indeed, probably so. But the remedy lies with the legislative branch. The judiciary has no power to devise tax programs or to qualify the existing legislative mandate with a judge's private view of what is just or sensible.

One further question shall be considered. Could the court, because of collateral public problems which are unrelated to unequal treatment of taxpayers but which will arise upon assessment at full true value, refrain from acting in a suit of this kind if the municipalities each accomplished intramunicipal equality at a percentage of true value? The answer, it seems to us, is that the statutory equality among taxpayers with respect to county taxes (and school taxes where the burden is shared by municipalities) can be

achieved only at full true value. If each municipality assessed all of its real and personal property at a single percentage of true value selected by it, there could be substantial equalization of the aggregates of real property at true value, but there is no statutory authority or available technique for such equalization of the aggregates of personal property. If the aggregates of real property are equalized while the aggregates of personal property are not, then clearly the apportionment of the county tax (and school tax) would be discriminatory as among the total taxpayers of the several municipalities and also as between the owners of real property and personal property within each municipality. And if all municipalities assessed personal property at full true value while each applied a percentage of true value to real property, then although, upon equalization of aggregates of real property, equality would substantially result with respect to the *county* tax (and school tax), yet real and personal property, being assessed upon an unequal basis for municipal purposes, would not share equally the cost of *municipal* government. Hence, we see no escape from the proposition that the existing legislative policy can be satisfied only by assessment of all taxable property at full true value.

III.

The county board urges it is entitled to judgment as a matter of law. In *Switz* it was noted that basically the problem in many, if not most, of the municipalities was that the assessment rolls were out of hand and hence nothing short of municipal-wide revaluations would bring order out of chaos; that the county board had neither the time nor the funds for so massive an effort; and that accordingly a judgment directing it to perform the basic duties of the assessors would be unwarranted. We expressed our confidence that if the local assessors did their job, the county board would not fail in its assigned role. We have no rea-

son to feel differently about the county board in the present case. However, the motion was based upon the pleadings, and plaintiffs cannot be denied the opportunity to prove the factual allegation quoted in the second paragraph of this opinion. Hence the motion was properly denied. But we repeat that the board cannot be expected to assume the primary role of the assessors and hence a judgment should not run against it unless it appears that the board has either impeded the assessors or has evidenced an intent not to discharge its function within the limits of its authority and facilities. And of course insofar as the complaint seeks to compel the county board to undo its work for the year 1959, we agree for the reasons given above that such relief may not be granted. The time for final action by the board and review thereof has long since passed. N. J. S. A. 54:4-55.

The orders are accordingly affirmed.

For affirmance—Chief Justice Weintraub, and Justices Burling, Francis, Proctor, Hall and Schettino—6.

For reversal—None.

Opinions of Supreme Court of New Jersey.

SUPREME COURT OF NEW JERSEY.

VILLAGE OF RIDGEFIELD PARK, a Municipal Corporation of the State of New Jersey, *et als.*,
Plaintiffs-Respondents,

v.

BERGEN COUNTY BOARD OF TAXATION, *et als.*,
Defendants-Appellants.

Argued June 13, 1960—Decided June 28, 1960.

On appeal from the Superior Court, Law Division.

MR. MILTON T. LASHER argued the cause for appellants County of Bergen and Charles B. Bleasby, County Treasurer.

MR. THEODORE I. BOTTER, Deputy Attorney General, argued the cause for appellant Bergen County Board of Taxation (MR. DAVID D. FURMAN, Attorney General, attorney; MR. THEODORE I. BOTTER, of counsel).

MR. WILLIAM R. MORRISON argued the cause for respondents (Messrs. MORRISON, LLOYD & GRIGGS, attorneys).

The opinion of the court was delivered by WEINTRAUB, C. J.

We granted certification to review a partial final judgment ordering the county treasurer to refund to Ridgefield Park the sum of $192,912.58, being the moneys it had paid to meet its apportioned share of the county tax for the year 1959. 33 N. J. 113, 162 A. 2d 340 (1960). The trial court's opinion appears in 61 N. J. Super. 170 (Law Div. 1960).

This cause was recently before us upon appeals from interlocutory orders. *Village of Ridgefield Park* v. *Bergen County Board of Taxation*, 31 N. J. 420 (1960). We there held that if plaintiffs sustained their charges, a judgment should be entered with respect to future tax years ordering the assessors of the other municipalities of the county to assess real and personal property at true value in accordance with the controlling statutes. With respect to taxes for the year 1959, we there held (31 N. J., at p. 427):

> "Defendants correctly challenge plaintiffs' attempt to attack directly in these proceedings the equalization table (R. S. 54:3-17 to 19), the apportionment valuation (N. J. S. A. 54:4-49), and the table of aggregates (N. J. S. A. 54:4-52) made and prepared by the county board for the purpose of allocating the cost of county government for the year 1959 and to restrain the collection of taxes for that year. The reason is not the adequacy of an administrative review to reach the basic vice of unequal assessments of the underlying individual properties. An administrative review of the county board's work is no more adequate to that end than are the other administrative procedures to which we referred above in reaching the conclusion that a *mandamus* may issue without prior recourse to them. Rather the compelling reason is that government must function and to that end must have funds. It would be quite extraordinary to enjoin in a wholesale fashion the assessment or collection of taxes where the properties are lawfully taxable and the infirmity is claimed to reside in the valuation process. See in general, 51 Am. Jur., Taxation, §1218, p. 1039. This essential public policy is reflected in N. J. S. A. 54:2-37, which provides that the review of the county equalization table by the Division of Tax Appeals 'shall not suspend the apportionment of moneys or

collection of taxes.' The remedy for the alleged inequity cannot be one which will deny the public the vital services it needs. The question of a subsequent credit either under statute or judicial principle is of course another matter."

Despite the foregoing, the trial court upon remand adjudged the equalization table and the table of aggregates for the year 1959 to be unconstitutional and void insofar as they relate to Ridgefield Park; made a like determination with respect to the apportionment of the county tax for that year; and ordered the repayment to Ridgefield Park of the full amount of the county tax apportioned to the village for that year. The effect is to relieve that municipality of all liability for the cost of county government and indeed to retain moneys it had collected from taxpayers for the benefit of the county.

Clearly the judgment before us does not comply with our mandate.

In support of the present judgment, emphasis is placed upon the trial court's finding that the county board failed to equalize the aggregates of personal property assessments. We have already dealt with that subject. In *City of Passaic* v. *Passaic County Board of Taxation*, 31 N. J. 413 (1960), decided on the very day of our decision in the first appeal in the present case, we concluded that although the county board was required by statute to equalize the aggregates of real property assessments, yet, for the reasons there stated, the board had to accept the aggregates of personalty without equalization. As to the contention that the inclusion of the aggregates of personal property without equalization would offend constitutional limitations, we said, and we here repeat for the guidance of the trial court with respect to other issues as yet unconcluded by judgment in this case (31 N. J., at p. 419):

"What we have just said disposes of any conceivable constitutional objection. The Legislature

need not refrain from achieving a measure of equality where it can merely because its technique is not serviceable throughout the apportionment basis. Absolute equality in taxation is a practical impossibility. *Borough of Totowa* v. *Passaic County Board of Taxation, supra.* (5 N. J. [454], at page 464). As we have said, the inequality of which the city complains is not the product of the statute. Rather it is the product of the failure of assessors to comply with the legislative mandate. If it be assumed the resulting inequality in operation presents a constitutional problem, it is sufficient to say the appropriate remedy is one addressed to the underlying failure, and that remedy is available, as we have this day held, *Village of Ridgefield Park* v. *Bergen County Board of Taxation*, 31 N. J. 420, in the form of an action to compel the local assessors to discharge their duties."

Indeed our earlier opinion in the present case contained a specific cross-reference to *City of Passaic* (31 N. J., at p. 431).

To recapitulate, the equalization table for 1959 and the apportionment of the county tax for that year could be reviewed as such only in the administrative process; and with respect to a claimed inequity for the year 1959 which was beyond relief by way of administrative review, Ridgefield Park can at most seek a credit against a future apportionment in such amount as it shows to be in excess of the share it would have owed if the statutory provisions had been honored by the local assessors within the county.

We cannot agree that the Constitution requires the claimed inequity to be rectified only by nullification of the apportioned tax with the governmental chaos which would ensue. The appropriate course, as held upon the first appeal, is to seek a credit in another year for the overcharge. We are not unmindful of the problems of proof in demonstrating the amount of the claimed excess, but the answer

lies in a common sense approach to the sufficiency of the required showing, and not in a destruction of tax revenues.

The judgment under review is accordingly reversed and vacated in its entirety and the matter remanded for further proceedings in accordance with this and our prior opinion. We understand from the oral argument that at some stage a companion action between the county treasurer and Ridgefield Park (see *Bleasby* v. *Jones*, 57 N. J. Super. 316 (Law Div. 1959), certif. granted and cause remanded for further proceedings 31 N. J. 552 (1960)), was consolidated with the present action. Our determination here of course also controls that other proceeding.

For reversal—Chief Justice WEINTRAUB, and Justices BURLING, FRANCIS, PROCTOR, HALL and SCHETTINO—6.

For affirmance—None.

Mandate on Reversal.

SUPREME COURT OF NEW JERSEY,

APPEAL DOCKET No. 3181.

VILLAGE OF RIDGEFIELD PARK, a municipal corporation of the State of New Jersey, *et als.*, Plaintiffs-Respondents, *vs.* BERGEN COUNTY BOARD OF TAXATION, *et als.*, Defendants-Appellants.	Civil Action. On Appeal.

This cause having been duly argued before this Court by Mr. Milton T. Lasher, counsel for the appellants, County of Bergen and Charles B. Bleasby, County Treasurer, and Mr. Theodore I. Botter, Bergen County Board of Taxation and counsel for the appellant. Mr. William R. Morrison, counsel for the respondents, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court—Law Division is in all things reversed, set aside and for nothing holden, with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record and proceedings be remitted to the said Superior Court—Law Division to be there proceeded with in accordance with the rules and practice relating to that Court, consistent with the opinion of this Court.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the twenty-eighth day of June, 1960.

Filed
June 28, 1960
JOHN H. GILDEA
Clerk

s/ JOHN H. GILDEA
Clerk of the Supreme Court

APPENDIX B.

Opinions and Judgments of Superior Court, Law Division.

SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION.

CHARLES B. BLEASBY, County Treasurer of the COUNTY OF BERGEN,
Plaintiff,

vs.

HAROLD J. JONES, Collector-Treasurer, and the BOARD OF COMMISSIONERS OF THE VILLAGE OF RIDGEFIELD PARK,
Defendants.

DECIDED OCTOBER 9, 1959.

MR. MILTON T. LASHER, attorney for plaintiff.

MR. WILLIAM R. MORRISON, of Counsel for the defendants (MORRISON, LLOYD & GRIGGS, attorneys).

WAESCHE, J. S. C.

Plaintiff, Treasurer of Bergen County, on August 21st, 1959, filed a complaint in lieu of mandamus to compel the defendants, the tax collector and treasurer of the Village of Ridgefield Park, and the Board of Commissioners of said Village, to pay to the plaintiff, as such Treasurer, the sum of $63,005.09. The plaintiff contends that said sum became due and payable to him as Treasurer of Bergen County on August 15, 1959, as the third installment of the taxes levied for the year 1959 for county purposes against the real and personal property lying within the said municipality. The plaintiff contends that section 54:4-74 of the Revised Stat-

utes requires the defendants to pay to the plaintiff the said installment of taxes.

The defendants filed an answer in which they contend that the taxes levied for county purposes for the year 1959 against the real and personal property lying within the said Village are unconstitutional, illegal and void. Their defense rests upon the allegation that the assessed valuations of the real and personal property in the various municipalities in Bergen County have not been uniformly assessed and equalized as required by the Constitution, and, as a result thereof, the county taxes as apportioned and levied against the said Village are excessive, unconstitutional and void.

The Plaintiff brings this motion to strike paragraphs 2 and 3 of the defendants' answer, and to also strike the separate affirmative defenses of the answer wherein it is alleged that the said levy for county taxes is unconstitutional and void. The plaintiff is, therefore, seeking a summary judgment peremptorily ordering the defendants to pay to the plaintiff, as Treasurer of Bergen County, the said sum of $63,005.09 as the third installment of the taxes levied for the year 1959 for county purposes against the property, real and personal, lying within the said Village. A peremptory writ of mandamus issues only when the right thereto has been clearly established.

This suit is another phase of the litigation which was instituted in this court on March 18, 1959, by the Village of Ridgefield Park and certain owners of property situated in Ridgefield Park to determine the constitutionality and legality of the taxes levied for the year 1959 for county purposes against the real and personal property situated in said municipality. The complaint filed by said Village and others is in lieu of certiorari and mandamus. Certiorari is the proper action for such a purpose, *State* v. *Court of Common Pleas*, 1 N. J. 14 (1948). The Bergen County Board of Taxation, the County of Bergen, the Treasurer of Bergen County (the plaintiff in this suit), and the asses-

sors of each and every taxing district in Bergen County, are named as defendants. In that prior suit, the said Village contends that the apportionment of the amount to be raised by taxation for county purposes and levied on the property situated in Ridgefield Park is unconstitutional, illegal and void. The complaint alleges that the valuation assessments levied on the real and personal property in the taxing districts in Bergen County have not been uniformly assessed, and that the assessments have not been equalized among the various taxing districts, and that, therefore, the County taxes levied on Ridgefield Park are excessive, unconstitutional, illegal and void. In said suit, the Village seeks to have the taxes levied for the year 1959 for county purposes aganist the property in Ridgefield Park set aside as void *ab initio* An answer was filed on behalf of the Bergen County Board of Taxation, the County of Bergen, the Treasurer of Bergen County and most of the local assessors. A pretrial order was entered on May 4, 1959, and the case was set down for trial on June 1, 1959.

In the said suit brought by Ridgefield Park, a motion was made on behalf of the Bergen County Board of Taxation, and also on behalf of some of the defendant assessors, for a summary judgment dismissing the complaint filed by the said Village. The trial court held that the complaint set forth a good cause for action, and denied the motion. From the order denying the motion, an appeal was taken to the Appellate Division, as a result of which the trial of the issues involved, which was to begin June 1, 1959, is stayed until the appeal has been determined.

For the purpose of the motion made by plaintiff, as Treasurer of Bergen County, for a summary judgment, he admits all the well pleaded allegations of material facts in the separate defenses in the answer of the defendants, and all facts reasonably inferable therefrom. If there is a genuine issue of material facts that must be determined before judgment can be given, a summary judgment cannot be entered. *Coastal Oil Co.* v. *Eastern Tankers Sea-*

ways Corp., 29 N. J. Super. 565 (App. Div. 1954); *Orrok* v. *Parmigiani*, 32 N. J. Super. 70 (App. Div. 1954); *Bickwit* v. *Hammes*, 34 N. J. Super. 568 (Ch. Div. 1955); *McDermott* v. *Botwick*, 38 N. J. Super. 528 (App. Div. 1956). For the purpose of this motion, the said plaintiff, as Treasurer of Bergen County, therefore admits the allegations in the answer of the defendants that the real and personal property in the various taxing districts of Bergen County have not been uniformly assessed and the assessed value equalized as required by the Constitution of New Jersey, and that, as a result thereof, the county taxes levied against Ridgefield Park for the year 1959 are excessive and void.

All acts relating to taxation and the enforcement thereof are subject to the constitutional requirement of equality and uniformity. The constitutional mandate that property shall be assessed for taxes by uniform rules is self-executing. No legislation is needed to give it effect, and anything done in violation thereof is absolutely void and of no effect. Consequently, no tax can be lawfully laid on property which is not determined by a valuation of the property by a uniform rule. *State, North Ward National Bank, pros* v. *City of Newark*, 39 N. J. L. 380 (Sup. Ct. 1877) reversed on other grounds 40 N. J. L. 558 (E. & A. 1878); *Taylor* v. *Smith*, 50 N. J. L. 101 (Sup. Ct. 1887); *Sisters of St. Elizabeth* v. *Chatham*, 51 N. J. L. 89 (Sup. Ct. 1888) reversed on other grounds 52 N. J. L. 373 (E. & A. 1890); *Cooper Hospital* v. *Camden*, 68 N. J. L. 691 (E. & A. 1902); *Jersey City* v. *Vreeland*, 43 N. J. L. 638 (E. & A. 1881); *Kraus* v. *City of Cleveland*, 96 N. E. 2d 314, 89 Ohio App. 504 (1950), appeal dismissed 97 N. E. 2d 549, 155 Ohio St. 98 (Sup. Ct. 1951). The constitutional requirement that property shall be assessed by uniform rules implies equality in the burden of taxation. A tax for a county must be, therefore, uniform and equal throughout the county. In the case of *State Board of Assessors* v. *Central R. R. Co.* 48 N. J. L. 146 (E. & A. 1886) Mr. Justice Depue said on p. 340 that, "• • • the constitution requires the same percentage of

value upon all taxable property • • • in the county if for county purposes • • •." See, also, 51 Am. Jur. 203 sec. 153; 84 C. J. S. 78, sec. 22; *Cooley Taxation* (4th Ed.) Vol. 1 p. 612, sec. 295, p. 625, sec. 299, p. 638, sec. 304, p. 644, sec. 310. It is of the very essence of taxation that it should be equal and uniform. When the amount levied is determined without regard to such constitutional requirements, the power exercised is not that of taxation but of confiscation. *State, ex rel. Trustees, etc.* v. *Township Committee of Readington*, 36 N. J. L. 66 (Sup. Ct. 1872). In the case of *State Board of Assessors* v. *Central R. R. Co.*, 48 N. J. L. 146 (E. & A. 1886). Mr. Justice Parker said on page 298, that the taxing power was "controlled by constitutional limitations, which the people have adopted." In the case of *Baldwin Const. Co.* v. *Essex County Bd. of Taxation*, 16 N. J. 329 (1954) the court said that "The dominant principle of the new constitutional mandate is equality of treatment and burden. And this was of the essence and spirit of the old Constitution as well." In the case of *Trustees of Public Schools* v. *City of Trenton*, 30 N. J. Eq. 667 (E. & A. 1879), in an opinion written by Mr. Justice Depue, the court said:

> "The reasons which induced the adoption of the constitutional provision are deep-seated in principles of public policy. Its object was to secure to the people of the state the equalization of taxes, so far as was practicable, by requiring the imposition of taxes on property by general laws, on the principle of uniformity in the subjects of taxation and in valuations."

Since these provisions in the Constitution are limitations on the power to tax, they must be obeyed. They were adopted by the people for their protection against the exercise of arbitrary power under color of governmental authority. Unequal valuation assessments of property

violate not only the requirements of the Constitution of New Jersey but also the equal-protection-of-the-laws provision in the Federal Constitution, "Cooley Taxation" (4th Edition) Vol. 1, sec. 131; *Hillsborough Township* v. *Cromwell*, 326 U. S. 620; 90 L. Ed. 358. An unconstitutional act is void *ab initio*, and its invalidity must be recognized for all purposes.

The apportionment, among the municipalities of a county, of the taxes that are required for county purposes is determined by the net assessed value of all the real and personal property in the county which is subject to such taxation. The statutes of New Jersey impose on each county board of taxation the duty of securing, by uniform rules, the equalization of the assessed value of all the taxable real and personal property in the county in order that all property within the county, except such as shall be exempt by law, shall bear its full, equal and just share of the taxes required for county purposes. (R. S. 54:3-13, -15, -17, -19; 54:4-46, -47, -48, -49). The total amount of taxes to be raised each year for county purposes by the municipalities within a county is divided by the total net assessed value of all the taxable real and personal property in the county as fixed and determined by the county board of taxation. The quotient resulting from this division is the percentage of such total net value of the taxable real and personal property, as determined by the county board of taxation, which is used as the rate for apportioning the county taxes among the municipalities of the county. The amount of taxes to be levied against a single municipality for county purposes is determined by multiplying the total net assessed value of all the taxable real and personal property in such municipality, as determined by the county board of taxation, by the said rate for apportioning the county taxes. This method of apportioning the county taxes among the municipalities within a county is merely a simple mathematical calculation after the property, which is to bear the burden of the county taxes, has been uniformly

assessed and equalized as required by the New Jersey Constitution. It is obvious, therefore, that if the value of the property has not been uniformly assessed and equalized as required by the Constitution, the taxes levied on the property will be unequal, burdensome, and unconstitutional.

The "Sixth Report" of "The Commission on State Tax Policy" of New Jersey, which was submitted to the Governor and to the Legislature in February, 1953, states that property valuations and assessments in New Jersey are marred by the grossest inequities, and that the taxation on personal property in New Jersey is both a scandal and a hazard." The report is entitled "A Century of Inequities" in the taxation of property in New Jersey. The situation as reported by the "Commission on State Tax Policy" concerning the valuation assessments on property in New Jersey has existed, according to the said report, for one hundred years. It is a notorious historical fact that, for many years, the constitutional injunction that property be assessed for taxation uniformly has been flagrantly violated in New Jersey. As a result thereof, the unequal apportionment of the tax burden on property has created a serious economic condition for the public and for the taxpayers alike. This condition must be rectified in the public interest. The people are entitled to the protection which the adoption of the New Jersey and Federal Constitutions was intended to give them, and no Court should give its support to any unjustified maneuver taken pursuant only to the adjective law which would, in effect, nullify or defeat such protection. The cost of litigation and the delay in obtaining a final adjudication according to the substantive law could be fatal obstacles to relief from unjust and burdensome taxation. The taxpayer is thus caught on the horns of a dilemma, and whichever way he turns could be ruinous for him. A property owner is entitled to be given speedy, efficient, and complete relief

from unjust and burdensome taxation. The administrative agencies cannot always give such relief, because they have no jurisdiction to pass on constitutional questions. *Schwartz* v. *Essex County Board of Taxation*, 129 N. J. L. 129, 132 (Sup. Ct. 1942), aff. 130 N. J. L. 177 (E. & A. 1943).

In the case of *City of Topeka* v. *Boyd, County Treasurer*, 127 Kan. 202, 272 P. 124 (Sup. Ct. of Kan., 1928) the said City brought a proceeding in *mandamus* to compel the Treasurer of Shawnee County to pay to the City certain taxes which the County Treasurer had collected for the City. The answer filed by the County Treasurer alleged that the City had no legal right to the taxes, because they were improperly assessed. The Court said that "a taxpayer has a right to contest an illegal tax, and no officer, county or city, has a right to impose or collect one that is illegal." The writ of *mandamus* was therefore denied.

The plaintiff's motion for a peremptory writ of *mandamus* is denied for the foregoing reasons.

Opinions and Judgments of Superior Court, Law Division.

SUPERIOR COURT OF NEW JERSEY,

LAW DIVISION.

VILLAGE OF RIDGEFIELD PARK, *et als.*,
Plaintiffs,

v.

BERGEN COUNTY BOARD OF TAXATION, *et als.*,
Defendants.

Decided April 11, 1960.

Messrs. MORRISON, LLOYD & GRIGGS (Mr. WILLIAM R. MORRISON, appearing) attorneys for plaintiffs.

Mr. THEODORE I. BOTTER, Deputy Attorney General appeared for defendant Bergen County Board of Taxation (Mr. DAVID D. FURMAN, Attorney General, attorney).

WAESCHE, J. S. C.

This action is a procedure in lieu of the prerogative writs of *certiorari* and *mandamus*. There is an alliance between these two proceedings. They have a common interest, but they seek different forms of relief. They will be treated separately in this opinion. The proceeding in the nature of *certiorari* will be considered first.

The plaintiffs are the Village of Ridgefield Park, a municipal taxing district of Bergen County, and several residents and taxpayers of Ridgefield Park. The residents and taxpayers are suing on their own behalf and also on behalf of all the other taxpayers of Ridgefield Park who are similarly situated. The defendants are the Bergen County Board of Taxation and its members, of the County of Bergen and its treasurer, and the assessors of the other 69 municipal taxing districts of Bergen County. This

action, in lieu of *certiorari*, brings before this court for review the 1959 valuation assessments for taxation on the real and personal property in each of the 70 municipalities of Bergen County; the proceedings and action of the Bergen County Board of Taxation respecting its review of the 1959 tax assessment lists of the respective taxing districts of the county; the equalization table and table of aggregates for the year 1959 prepared by the Bergen County Board of Taxation; the "apportionment valuation" of each taxing district required by N. J. S. A. 54:4-49; and the constitutionality and legality of the Bergen County taxes apportioned for the year 1959 against the Village of Ridgefield Park, together with all things touching and concerning the same.

The only taxes involved in this litigation are the Bergen County taxes. Bergen County lies on the westerly side of the Hudson River directly opposite New York City. The picturesque Palisades on the west bank of the Hudson River are in Bergen County. On the top of the Palisades lies the Palisade Interstate Park, and the beautiful Parkway leading from the George Washington Bridge northward into New York State. The westerly end of the George Washington Bridge is in the Borough of Fort Lee, Bergen County. On the westerly side of the county is the Passaic River, and halfway between the Passaic River and the Hudson River is the Hackensack River, which is navigable up as far as the City of Hackensack. The county is criss-crossed by several super-highways: Garden State Parkway, New Jersey Turnpike, State Highway Routes Numbers 4, 46, and 17, as well as several others; and it is also crossed by several railroads. The area of the county is 246.31 square miles of which 236.05 square miles is land. The estimated population of Bergen County as of December 31, 1958 was 728,044. In 1950 its population was 539,139. Bergen County is a rapidly growing county both in population and in industry and commerce.

There are 70 municipalities in Bergen County. They vary in size both in area and in population; and they are very different in their development, location, and also in their natural characteristics. The largest municipality in area, Mahwah, lies in the northwest corner of the county. It has a population of approximately 7,000, and an area of 25.93 square miles. It is primarily a residential and farming community, but it has some industry. The smallest municipality, South Hackensack, lies in the southerly part of the county. It has an area of a little more than half a square mile (.61 of a square mile), and a population of approximately 1,800. It is an important industrial community. Teterboro, also in the southerly part of the county, has a population of 30, but it has many large, modern industries. In Paramus and in the City of Hackensack, there are immense commercial and shopping centers. Leonia, Haworth, Saddle River Borough, Old Tappan and many other municipalities have no industry whatever. They are strictly one-family residential communities. Many of the other communities that are primarily single-family residential in character have some industry and some commercial establishments. Each municipality in Bergen County has its own zoning ordinance restricting and regulating the use of the land within its borders. No two municipalities are exactly alike; and there are great differences between some.

In Bergen County there is valuable river waterfront land: land which lies along the Hackensack River, Passaic River, and Hudson River. There is also valuable land along the super-highways, and land which has important railroad accommodations. There is land available for residential use, for commercial and industrial use, for farming, and for almost any other use. The value of land is determined by its availability and convenience for use. In the case of *Cleveland C. C. & St. L. R. Co.* v. *Backus*, 154 U. S. 439, 445, 14 S. Ct. 1122, 38 L. Ed. 1041, 1046 (1894), the United States Supreme Court said:

> "The value of property results from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value."

The value of land in Bergen County depends upon a great many different considerations.

THE LEGISLATURE'S CONTROL OVER TAXATION.

The power of taxation is exclusively a legislative function. In the early case of *State (Wagner, Prosecutor)* v. *Collector of Taxes of Delaware Tp.*, 31 N. J. L. 189, 195 (Sup. Ct. 1865), the court said that "The power of taxation is beyond a doubt a legislative power, * * *." In the case of *Munday* v. *Assessors of City of Rahway*, 43 N. J. L. 338, 346-347 (Sup. Ct. 1881), affirmed 44 N. J. L. 395 (E. & A. 1882), the Supreme Court said:

> "And in the latest decision of the Supreme Court of the United States touching this subject (*Meriwether* v. *Garrett, ubi supra* [102 U. S. 472, 26 L. Ed. 197]), all the judges concur in the view that the power of taxation is legislative, that the levying of taxes is not a judicial act, but one which belongs to the legislative department exclusively, to be performed upon considerations of policy, necessity and the public welfare.
>
> The same doctrine has been frequently enunciated in our state courts. *State* v. *Newark* [26 N. J. L. 519], 2 Dutcher 519; *State*, *Ruckman* v. *Demarest* [32 N. J. L. 528], 3 Vroom 528; *State, Gaines, pros.* v. *Hudson Co. Ave. Com'rs* [37 N. J. L. 12], 8 Vroom 12. See 2 Dill. on Mun. Corp., §737 (588). note 2, (3d ed)"

In the case of *State Board of Assessors* v. *Central R. R. Co.*, 48 N. J. L. 146, 308 (E. & A. 1886), Mr. Justice Dixon in his opinion said:

> "It is laid down that the power to tax belongs to the legislature and its agents exclusively, • • •. The struggle for fairness of taxation must remain in the parliamentary arena, • • •."

In the case of *Trustees for Support of Public Schools* v. *Inhabitants of City of Trenton*, 30 N. J. Eq. 667, 678 (E. & A. 1879), the court said:

> "Whether taxes be assessed by an officer elected by the people, and called an assessor, or by a commissioner appointed by a municipal body • • • are matters of little importance which the framers of the constitutional amendments wisely left to the legislative discretion."

In the case of *Spencer* v. *Merchant*, 125 U. S. 345, 8 S. Ct. 921, 31 L. Ed. 763 (1887), the Supreme Court of the United States said:

> "The power to tax belongs exclusively to the legislative branch of the government. (Cases cited.) In the words of Chief Justice Chase, condensing what had been said long before by Chief Justice Marshall: 'The judicial department cannot prescribe to the legislative department limitations upon the the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons; but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected.' [Cases cited.]"

1 Cooley on Taxation (4th ed.) sec. 64, p. 160, states the law as follows:

> "The state government has inherent power to levy taxes. This means the proper department of the state. In the creation of three distinct departments of the government, and the apportionment of power between them, the authority to tax necessarily falls to the legislative. This is manifest from the slightest consideration of what taxation is. It is the making of rules and regulations under which the necessary revenues for all the needs of government are to be apportioned among the people and collected from them. Taxation is a legislative power; and when the people, by their constitutions, create a department of government upon which they confer the power to make laws, the power of taxation is conferred as part of the more general power."

See, also, *State* v. *Branin*, 23 N. J. L. 484, 494 (Sup. Ct. 1852); *State* (*Golding, Prosecutor*) v. *Collector of Borough of Chambersburg*, 37 N. J. L. 258, 260 (Sup. Ct. 1874); *State Board of Assessors* v. *Central R. R. Co.*, 48 N. J. L. 146 (E. & A. 1886); *Jersey City* v. *State Board of Tax Appeals*, 133 N. J. L. 202, 205 (Sup. Ct. 1945).

No matter how the proceeds of a tax are appropriated, every tax is a state tax which can only be imposed by the authority of the Legislature, subject to the constitutional requirement of uniformity. *Camden & Amboy R. R. & Tr. Co.* v. *Commissioners of Appeal*, 18 N. J. L. 71 (Sup. Ct. 1840); *State* (*Camden & Burlington R. R. Co., prosecutor*) v. *Cook, Col.*, 32 N. J. L. 338 (Sup. Ct. 1867); *Vreeland* v. *Mayor, etc., of Jersey City*, 43 N. J. L. 135 (Sup. Ct. 1881); *State Board of Assessors* v. *Central R. R. Co.*, 48 N. J. L. 146, 280 (E. & A. 1886).

In every municipality in Bergen County, the Legislature has created the office of municipal assessor, or a board of assessors, for the purpose of valuing property for taxation. The statutes provide for the manner in which the office of municipal assessor, or the members of a board of assessors,

shall be filled. In some municipalities, the assessor is appointed by the mayor, or by the governing body of the municipality, and in other municipalities the assessor, or the members of a board of assessors, are elected by the people of the municipality. The statutes also provide for the duties of the assessor, or board of assessors, in each municipality. The municipal assessor, or board of assessors, is the agent of the Legislature for the purpose of valuing property within the municipality for the purpose of taxation. *Public Service Electric & Gas Co.* v. *City of Camden*, 118 N. J. L. 245 (Sup. Ct. 1937); *Jersey City* v. *Martin*, 126 N. J. L. 353 (E. & A. 1941); *Stothers* v. *Martini*, 6 N. J. 560 (1951); *Delaware, L. & W. R. Co.* v. *City of Hoboken*, 10 N. J. 418 (1952); *Summer Cottagers Ass'n of Cape May* v. *City of Cape May*, 19 N. J. 493 (1955). Property within a municipality can be assessed by taxation only by the assessor, or by the board of assessors, of the municipality. 3 Cooley, Taxation (4th ed.), sec. 1046, p. 2121. An assessment of the value of property within a municipality for the purpose of taxation made by anyone other than by the assessor for that municipality, or by the board of assessors for that municipality, is an illegal and invalid assessment, 3 Cooley, Taxation (4th ed.), sec. 1136, p. 2292.

VALUE BY THE ASSESSORS.

The Legislature of New Jersey specifically requires that:

> "All property, real and perso[illegible] • • • shall be subject to taxation • • • at its true value, and shall be *valued by the assessors* of the respective taxing districts." N. J. S. A. 54:4-1.

In the section of the statute providing for the assessment of the value of personal property for taxation, the Legislature repeats its express requirement that:

> "The assessor shall annually ascertain • • • *according to the best of his ability and judgment* • • •

the true value of all the personal property * * *." (Emphasis added) N. J. S. A. 54:4-12.

And, in the section of the statute providing for the assessment of the value of real property, the Legislature once again specifically requires that:

"The assessor shall * * * determine the full and fair value of each parcel of real property situate in the taxing district at such price as, *in his judgment*, it would sell for * * *." (Emphasis added) N. J. S. A. 54:4-23.

N. J. S. A. 54:4-36 of the tax statute requires the assessor to annex to his tax assessment list and duplicate an affidavit in substantially the following form:

"I, , assessor of the of , do swear (or affirm) that the foregoing list contains the valuations made by me to the best of my ability, of all the property liable to taxation in the taxing district in which I am the assessor, and that I have valued it, without favor or partiality, * * * and have made such deduction only for debts and exemptions as are prescribed by law."

In volumes 3 and 4 of Cooley, Taxation (4th ed.), appear the following statements on the law of taxation:

Sec. 1052. "Assessment is a *quasi* judicial act * * *." P. 2127.

Sec. 1136. "There is no valid assessment unless the valuation is made by the proper officer or board, * * *." P. 2292.

Sec. 1138. "The assessor, in valuing property, must apply his own knowledge and exercise his own judgment." P. 2293.

> Sec. 1146. "• • • the assessor is to value the property according to his best judgment • • •." P. 2308.
>
> Sec. 1601. "Assessors exercise a *quasi* judicial authority, and when property is to be taxed by value, the value must be determined by their judgment." P. 3181.

In the case of *Weyerhaeuser Timber Co.* v. *Pierce County,* 97 Wash. 534, 167 P. 35, 38 (Sup. Ct. 1917), the court said:

> "It is well settled that the assessor and board of equalization act in a *quasi* judicial capacity • • •."

In the case of *State (Keeler, Prosecutor)* v. *Tindall, Collector of Ewing,* 36 N. J. L. 97 (Sup. Ct. 1872), the court said that it was the duty of the assessor to determine the actual value of the property to be assessed *according to his own independent judgment,* and that the determination of the value of property was committed *"exclusively to the judgment of the assessor himself."* (Emphasis added) In the case of *Newark* v. *Tunis,* 81 N. J. L. 45 (Sup. Ct. 1911), affirmed 82 N. J. L. 461 (E. & A. 1911), the Supreme Court said that the tax statutes had put into the hands of the assessors the power and the responsibility of fixing proper valuations on the property subject to taxation. The Court of Errors and Appeals, in its opinion in the case of *United New Jersey R. & Canal Co.* v. *State Board, etc.,* 100 N. J. L. 131 (E. & E. 1924), expressed itself as follows:

> "In the case of *Central Railroad Co.* v. *State Board of Assessors,* 49 N. J. L. 1, 9, Chief Justice Beasley, speaking for the Supreme Court, said: 'We do not consider that we have the right to alter or annul any of the proceedings of this body of officers, except the palpable error, for it is not to be overlooked that the statute in question expressly declares

that these assessors "shall be entitled to use their personal knowledge and judgment as to the value of property," a capacity with which this court is not endowed by the Legislature.' The Legislature must have intended these words in the statute to have a meaning and purpose."

Corpus Juris Secundum states the law to be as follows:

"Generally, the value of property for the purpose of taxation must be ascertained by the legally constituted authorities set up and established for that purpose. In order to constitute a valid assessment of property for taxation, the valuation of the property must be made by the proper assessing officer himself, and in making the estimate he may and must apply his own knowledge and exercise his own judgment; he cannot delegate this duty to another." 84 C. J. S. Taxation § 410, b, pp. 787, 788.

In 3 Cooley, Taxation (4th ed.) sec. 1136, p. 2292, it is stated that "There is no valid assessment unless the valuation is made by the proper officer or board, * * *." And, at p. 2308, section 1146, Cooley states that "the assessor is to value the property according to his best judgment and with honest purpose."

In the case of *Colonial Life Ins. Co. of America* v. *State Board of Tax Appeals*, 126 N. J. L. 126 (Sup. Ct. 1941), the court said:

"* * * there is no absolute standard for the admeasurement of the value of land at a given time. The constitutional and statutory test is what the sound judgment of the experienced authority set up for the purpose deems it to be, taking into consideration all factors that reasonably enter into the determination of the question."

With respect to the means or sources of information by which the assessor determines the value of property, the statute is not mandatory, but merely directory. *State (Keeler, Prosecutor)* v. *Tindall, Collector of Ewing, supra; State (Robbins, Prosecutor)* v. *Treasurer and Collector of Borough of Merchantsville,* 38 N. J. L. 212 (Sup. Ct. 1875); *Levy* v. *North Bergen Twp.,* 10 N. J. Misc. 850 (Sup. Ct. 1932); 3 Cooley, Taxation, sec. 1138, p. 2293.

According to the judicial decisions in New Jersey, the price at which property might be expected to sell for private use is that price which, under normal conditions, a reasonable and prudent buyer would be willing to pay, and which a reasonable and prudent seller would be willing to accept. The circumstances of such a hypothetical sale must be fair in every respect to both purchaser and seller. It must be a situation in which the buyer is not obliged to buy, nor the owner forced to sell. The selling price cannot be determined by the necessities of the buyer, that is, the hold-up price which a necessitous buyer must pay in order to get the property he needs; nor can it be the sacrifice price which a seller is compelled by circumstances to accept without benefit of fair negotiation. In the case of *Hackensack Water Co.* v. *Division of Tax Appeals,* 2 N. J. 157 (1949), the court said that "Value for the purposes of taxation has some measure of permanency which renders it secure against general temporary inflation or deflation." In the case of *Ithaca Trust Co., Executor, etc.* v. *United States,* 279 U. S. 151, 49 S. Ct. 291, 73 L. Ed. 647 (1928), Mr. Justice Holmes said that the value of property at a given time as used in law depended upon the relative intensity of the social desire for it at that time, and on prophecies of the future. See, also, *Central R. R. Co.* v. *State Board of Assessors,* 49 N. J. L. 1, 6 (Sup. Ct. 1886); *Newark* v. *Tunis,* 81 N. J. L. 45 (Sup. Ct. 1911), affirmed 82 N. J. L. 461 (E. & A. 1911); *New Jersey Bell Tel. Co.* v. *City of Newark,* 118 N. J. L. 490, 494 (Sup. Ct. 1937), affirmed 124 N. J. L. 451 (E. & A. 1940); *In re Erie Railroad System,* 19 N. J. 110 (1955).

To a very great extent, the price which buyers are willing to pay for property is determined by human impulses, by human wants, hopes or desires, and by physical necessities and comforts. The fair market price of property, in a particular location, is also influenced by the supply and demand for property in that location. The demand for property is a composite of the subjective prices that prospective buyers are willing to pay. The fundamental attribute of property is the future benefits, comfort and enjoyment that arise from its ownership. It is from such intangibles that an assessor must determine the price at which property would sell for in his taxing district between a willing seller and a willing buyer. The process involves the use of the imagination and the consideration of such stuff as dreams are made on. "True value" is incapable of accurate measurement; it is a myth. Nevertheless, as defined by judicial decisions, it is the best standard we have for equalizing property values. There are many legal myths in law which are used every day, and usually serve a good purpose, but, like the "reasonably prudent person," they are sometimes hard to find and often appear about as legitimate as an old maid's children. Although the imagination plays a part in appraising property values, nevertheless an appraisal cannot lose touch with reality, and become a mere soaring fantasy. In the case of *Adams Express Co.* v. *Ohio State Auditor*, 166 U. S. 185, 222, 17 S. Ct. 604, 41 L. Ed. 965 (1899), the United States Supreme Court said that "Business men do not pay cash for property in moonshine or dreamland." A reasonably prudent buyer does not rely entirely upon random guessing. The actual buyer himself knows how much he is willing to pay for property, and the price which he is willing to pay is arrived at by his own process of logic and reasoning which ought to consist of a careful analysis of all the facts and circumstances that go to make up value within his knowledge. He should consider the selling price of comparable property, if he knows of any such sales. He should consider the reproduction cost,

less depreciation, of any structures, and their degree of obsolescence. If the property is income-producing property, a prudent prospective buyer ought to calculate its value by capitalizing the income. A prudent buyer anticipates the future, and considers the future benefits that he hopes to derive from his ownership of the property. The amount he is finally willing to pay also, to some degree, depends upon the extent of his reliance upon salesmanship; and upon his intuition, or some other mysterious occult feeling that urges and entreats him to acquire that particular piece or parcel of property, or to acquire property in a particular place or neighborhood.

There are 70 municipalities in Bergen County, and each municipality has its own assessor or board of assessors. In some of the municipalities the assessor is appointed by the mayor, or by the municipality's governing body. In other municipalities the assessor is elected by the people of that municipality. But, whether the assessor is appointed or elected, he holds his office at the pleasure of the people in the municipality of which he is the assessor. There are many times when, in order for him to remain in office, he must use expediency in making his valuation assessments. He must, if he wants reappointment, or re-election, favor the wishes of his appointing authority, or the wishes of his constituency, and make his assessments, in the manner of plucking a goose, in such a way that it will cause as little squawk as possible. When that happens, he can give very little consideration to the equal distribution of the tax burden. While a condition of this nature is deplorable, it is, nevertheless, inherent in the taxing system established by the Legislature for assessing the value of property for taxation. In most of the municipalities of Bergen County, assessing property for taxation is a part-time job, and sometimes the regular employer of the assessor is one of his municipality's largest taxpayers.

A few assessors have had experience in the valuation of real property, but there are none who are qualified to deter-

mine the value of all the personal property in their respective taxing districts, and only a very few make an effort to determine the "true value" of the personal property. Some assessors are mechanics, plumbers, or clerks; some are professional men; some are business men; and some are housewives. They are chosen from every occupation and walk of life. Except for a very few, the assessors of Bergen County perform their duties ably and conscientiously. If they assess at a ratio of "true value," they do so in the honest belief that they are compelled to do so in order to protect the welfare of their own respective municipalities, and because public sentiment requires them to do so.

The elements of value to be considered in assessing property, and the weight to be given them rest within the judicial discretion of the assessor, and, since there are so many factors that may be considered, almost any honest assessment can be justified. But, notwithstanding the knowledge and experience, or lack thereof, for determining the value of property, real or personal, no two assessors, from different muncipalities, value property alike; hence, with the very best of intentions, the valuation assessments as levied in each of the 70 municipalities in Bergen County by its respective assessor would not and could not result in uniformity throughout the County. The selling price of real property differs very widely in each of the different municipalities of Bergen County, and this is true even of real property having the same physical characteristics both as to land and improvements and subject to the same restrictions as to its use. Buying real property is not like buying a package of breakfast food. The heterogeneous character of the taxable real and personal property in Bergen County and its distribution over a large area create extraordinary difficulties in the equalization throughout the county of the valuation assessments. The assessor's knowledge of value, in general, is limited to the value of the property in his own taxing district, and in each of the 70 municipalities in Bergen County, the "true value" of

property, real and personal, under the law, is just what the municipal assessor, in his judgment, says it is in his municipality. This situation is well expressed metaphorically by Humpty Dumpty in Lewis Carroll's "Through the Looking Glass," when he said, in a rather scornful tone, "When I use a word, it means just what I choose it to mean—neither more or less." Alice was greatly confused to think that words could mean so many different things. Assessors are greatly confused to think that "true value" can have so many different meanings. In Bergen County the "true value" of property means at least 70 different things, for there are 70 different municipal assessors, each with an independent judgment as to the value of property in his own taxing district, and each with a different opinion of the meaning of "true value." Many municipal assessors do not even try to determine the "true value" of either the real or the personal property they assess. Some assessors testified that they did not know the meaning of "true value." Some testified that it was impossible to determine the "true value" of any property. Some assessors said that the current selling price of real property in their respective taxing districts represented an inflationary value—one assessor said that the selling price of real property in his taxing district had tripled in the past two years. Some assessors testified that furniture, fixtures, and other appurtenances were frequently included in the selling price of residential property. Some said that the real estate agent's commissions should not be included as part of the selling price because the commissions are not a part of the price a willing seller would accept for his property. Some said that the revenue stamps on a deed were unreliable as an indication of the selling price because frequently more stamps were put on the deed than the law required, and often the property was sold subject to a mortgage so that the revenue stamps only indicated the selling price of the seller's equity. This does not mean that assessors neglect their duties. On the contrary, as I have already

said nearly all the assessors in Bergen County conscientiously and honestly do the very best they can to assess property fairly and equally, and by far most of the assessors are well qualified to perform their duties as to the valuation of real property. The condition is an inevitable condition, which is inherent in the legislative system for assessing property for taxation.

COUNTY BOARD OF TAXATION.

Section 54:3-1 of the Revised Statutes provides for the continuation of the county boards of taxation which were created and established in the several counties for the equalization, revision, review and enforcement of taxes by the act entitled "A supplement to an act entitled 'An act for the assessment and collection of taxes,' approved April eighth, one thousand nine hundred and three," approved April fourteenth, one thousand nine hundred and six (L. 1906, c. 120, p. 210), as amended and supplemented. The 1906 supplement aforesaid, as amended and supplemented, provided for the establishment in each county of a "board for the equalization, revision, review and enforcement of taxes" (Suppl. to C. S. 3475, sec. 208-37 p.). Section 54:3-11 of the Revised Statutes provides that the county boards of taxation "shall perform all the duties formerly performed by * * * county boards charged with the review or equalization of tax assessments or tax lists, and all the duties formerly performed by the county boards of assessors." Section 21 of the Tax Act of 1903 provided that the county boards of assessors shall examine the tax duplicates of the various taxing districts and, for the purpose of apportioning the county tax, "add to the total assessed valuation shown on any duplicate such amount as will justly equalize the [county tax] burden" (L. 1903, p. 407; C. S. 5102, sec. 21). This duty of the county boards assessors was transferred to the county boards of taxation by a supplement to such act (L. 1906, sec. 5, p. 214; C. S. 5119, sec. 37t).

Section 54:3-13 of the Revised Statutes provides that:

> "Each county board of taxation shall secure the taxation of all property in the county at its true value, in order that all property, except such as shall be exempt by law, shall bear its full, equal and just share of taxes."

Section 54:4-46 of the Revised Statutes provides that:

> "Upon the filing of the assessment lists and duplicates by the assessors with the county board of taxation, the board shall meet for the purpose of examining, revising and correcting the tax lists and duplicates."

Section 54:4-47 of the Revised Statutes, as amended, provides that the county board of taxation may,

> "after investigation, revise, correct and equalize the assessed value of all property in the respective taxing districts, increase or decrease the assessed value of any property not truly valued, • • • and in general do everything necessary for the taxation of all property in the county equally and at its true value."

Section 54:4-48 of the Revised Statutes, as amended, requires that:

> "The county board of taxation shall enter all changes or additions on the various tax lists and duplicates, and, upon ascertaining the total amount of tax to be raised, fix and adjust the amount of • • • county tax to be levied in each taxing district in the county in proportion to the respective values thereof, • • •."

Section 54:4-55 of the Revised Statutes, as amended, requires the county board of taxation to certify to the collector of the taxing district that the corrected, revised, and

completed tax duplicate is a true record of the taxes assessed, and there is a presumption that the valuation assessments as revised and equalized by the county board are correct. *Meltzer* v. *Division of Tax Appeals*, 134 N. J. L. 510 (Sup. Ct. 1946).

In 51 Am. Jur. 683, sec. 742, it is stated as follows:

> "The fundamental duty and function of a board of equalization is, of course, to adjust the tax valuations of the property in the various tax districts of the state so that no individual tax district or particular class of taxable property is required to bear a disproportionate share of the total tax burden, and in the performance of this function such a board will be presumed to have exercised its powers fairly and reasonably."

In 84 C. J. S. Taxation 929, 930, the principle of law is expressed as follows:

> Sec. 490. "• • • county equalization, is intended to produce equality as between the taxing units or districts of such • • • county • • •."
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> Sec. 491. "Under some statutes equalization between taxing units by the proper county • • • board or officer is an essential part of the assessment procedure. • • • A statutory direction that taxes shall be equalized by an official board as between the different municipal divisions of a county is jurisdictional, and a failure to comply with this requirement renders the tax illegal and void."

In the case of *State, ex rel. Trustees of White House School Dist. No. 71* v. *Township Committee of Readington*, 36 N. J. L. 66, 70 (Sup. Ct. 1872), the court said:

> "It is of the very essence of taxation that it should be equal and uniform, and that where the burden is

> common there should be a common contribution to discharge it. * * * When the amount levied upon individuals is determined without regard to the amount or value exacted from any other individual or classes of individuals, the power exercised is not that of taxation but of eminent domain."

The tax rate is a percentage of the assessed value of the property to be taxed, and the amount of the tax, therefore, is that percentage of the assessed value. If all the property subject to the county tax is assessed at its "true value" then the amount of the tax levied against each property owner should be at the same rate or percentage.

In the case of *Town of Union in Hudson County* v. *Hudson County Board of Taxation*, 77 N. J. L. 178 (Sup. Ct. 1908), the court said:

> "The duty of the county board of taxation is declared to be to secure the taxation of all property at its true value, and it is given the supervision and control of all the assessors and other officers charged with the duty of the assessment of taxes; to view and inspect, as far as possible, the various assessed properties in the different taxing districts in their respective counties, and to make revision and correction after such view and inspection; to increase or decrease the assessed value of any property not truly valued, and to add to the duplicates any property which has been omitted, 'and in general to do and perform all acts and things necessary for the valuation of all property in said county equally and at its true value,' and it is also charged with the duty of reviewing taxes on appeal. P. L. 1906, p. 210. It thus appears that under the statute referred to the county board of taxation has the power to correct and revise the value of all taxable property, and to require the respective assessors to amend their duplicates or

lists of taxable property so that they conform to the values fixed by the board."

In the case of *Middletown Tp.* v. *Ivins*, 102 N. J. L. 36, 38 (Sup. Ct. 1925), the court said:

> "By section 2 of chapter 120 of the Laws of 1906 (P. L., p. 210) which act is a supplement to the Tax Act of 1903 and provides for the establishment of county boards of taxation, it is provided that: 'The duty of said boards shall be to secure the taxation of all property in the various counties of this state at its true value, in order that all property, except such as shall be exempt by law, shall bear its full, equal and just share of taxes.' In the performance of this duty, the county board was not only justified but obliged to direct the attention of the respective assessors to the fact that property was not being assessed at its true value, and it makes no difference where this information came from, or how it was obtained."

In the case of *Hackensack Water Co.* v. *Division of Tax Appeals*, 2 N. J. 157 (1949), the court said:

> "R. S. 54:4-46, 47 requires the County Board of Taxation to examine, revise and correct the assessor's tax list and duplicate, and by virtue of R. S. 54:4-55 it must certify to the tax collector the 'corrected, revised and completed duplicate • • • on or before April 1st.' The assessments levied on the property in the assessor's duplicate are not complete until the County Board certifies the assessor's duplicate to the tax collector."

In the case of *Borough of Totowa* v. *Passaic County Board of Taxation*, 5 N. J. 454, 460-461 (1950), the court said that R. S. 54:4-46 to 49 requires the county board of taxation:

> "to revise, correct and equalize the assessed value of all property in the taxing districts by raising or decreasing the assessed value of any property not truly valued, * * * and in general do everything necessary for the taxation of all property in the county equally and at its true value."

The county board of taxation is an integral part of the administrative machinery of taxation created by the Legislature to secure an equal and just distribution of the burden of taxation. It has the duty to revise, correct, and equalize the assessed value of all property, real and personal, in the county at its "true value." In the performance of its duties, it is acting as the agent of the Legislature. The valuation assessments of both the real and personal property as shown in the assessor's tax lists and duplicates are not final and complete until they have been reviewed and approved by the county board of taxation and certified to the respective municipal tax collectors. *Warren* v. *Hudson County*, 23 N. J. Misc. 252 (C. P. 1945), affirmed 135 N. J. L. 91 (Sup. Ct. 1946), affirmed 135 N. J. L. 178 (E. & A. 1947); *Middletown Tp.* v. *Ivins, supra; Hackensack Water Co.* v. *Division of Tax Appeals, supra; Baldwin Const. Co.* v. *Essex County Board of Taxation*, 16 N. J. 329 (1954); *City of Passaic* v. *Passaic County Board of Taxation*, 18 N. J. 371 (1955).

In the discharge of their duties, and in order to carry into effect the provisions of the law respecting the equalization of the valuation assessments throughout the county, the members of a county board of taxation are required, if necessary, to view and inspect any property subject to taxation insofar as possible, R. S. 54:3-15. The county board of taxation has supervision and control over the municipal assessors and may make such rules and other directives which the municipal assessors are required to follow in making their assessments, R. S. 54:3-16. The county board of taxation may examine any municipal assessor, and may

make any investigation it may deem advisable in the discharge of its duties to secure the taxation of all property in the county at its true value.

In the case of *Newark* v. *Tunis*, 81 N. J. L. 45 (Sup. Ct. 1911), affirmed 82 N. J. L. 461 (E. & A. 1911), the court said that the true value of both real and personal property was its market value as determined by the municipal assessor. I have already pointed out that it is the judgment of the municipal assessor which the Legislature has determined to be the method for determining the true value of the property within a single taxing district. The Legislature has directed, however, that it is the judgment of the county board of taxation which shall determine the true value of all property, real and personal, throughout the county. That is the only way that property can be assessed for a county tax by a uniform rule. It is obvious that the judgment of the municipal assessors could not be used to establish a uniform rule for assessing property throughout the 70 municipalities. If the judgment of the county board of taxation is not the method for determining the "true value" of the real and personal property throughout the county, then there is no uniform method, and the valuation assessments levied on property for the county tax would be unconstitutional. Uniformity in the rules for assessing property cannot exist without uniformity in the manner of determining its value. The individual judgments of 70 municipal assessors of the value of the property within their respective taxing districts do not and cannot comply with the constitutional requirement of uniformity.

An assessment is an *official estimate* of the values which are to constitute the basis of an apportionment of a tax (3 *Cooley, Taxation*, sec. 1044, p. 2114). The statutory method designating the county board of taxation to determine the valuation assessments of property throughout the county cannot be delegated to the local assessors (3 *Cooley, Taxation*, sec. 1134, p. 2290). The county board of taxation must apply its own knowledge and exercise its own judg-

ment (3 *Cooley, Taxation*, sec. 1138, p. 2293). The tax lists and duplicates after they have been revised, equalized, and corrected by the county board of taxation, are presumed to constitute the judgment of the county board of taxation as to the "true values" of the properties assessed.

In 1 *Cooley, Taxation*, sec. 11, p. 645, the law as to uniformity throughout a taxing district is stated as follows:

> "Uniformity of taxation, as provided by state constitutions, is required throughout the territorial limits of the taxing districts. * * * If the tax is a county tax, it must be uniform throughout the county."

APPORTIONING THE COUNTY TAX.

N. J. S. A. 54:4-41 requires the clerk of the board of chosen freeholders to transmit, each year, to the county board of taxation a statement showing the amount to be raised by taxation during the year for county purposes. The county board of taxation is required to fairly and uniformly apportion that amount among the various taxing districts of the county, N. J. S. A. 54:4-48 and 49. A percentage of the amount to be raised by taxation for the county is apportioned to each taxing district in the proportion that the *total "true value" of all the real and personal property in a taxing district* bears to the *total "true value" of all the real and personal property in the entire county.* For the purpose of making such an apportionment, R. S. 54:3-17 requires the county board of taxation to determine the total "true value" of all the taxable real property in each taxing district. The county board prepares an equalization table showing the total assessed value of the real property in each taxing district as assessed by the municipal assessor and as shown on his tax assessment list; the ratio or percentage of "true value" at which the real property of each taxing district is assessed by the municipal assessor; and the "true value" of the real property in each district as

determined by the county board. The equalization table, therefore, indicates the ratio or percentage, if any, by which the value of the real property in each taxing district as assessed by the assessor should be increased or decreased in order to make the assessed value of the real property correspond to its "true value."

Assessments are made each year as of October 1, N. J. S. A. 54:4-1. The equalization table has to be made each year. In determining the ratio or percentage of "true value" at which the real property in a taxing district is assessed, the county board considers the sales of property made during the past year in the taxing district. These sales may be of residential property, or of commercial property, or of industrial property, or vacant land or improved land. In the case of *Colonial Life Insurance Co. of America* v. *State Board of Tax Appeals*, 126 N. J. L. 126 (Sup. Ct. 1941), the court said that "Evidence of 'comparable sales' is ofttimes of questionable probative force, and is rarely, if ever, conclusive"; and in the case of *Central R. R. Co.* v. *State Board of Assessors*, 49 N. J. L. 1 (Sup. Ct. 1886), the court said that "It is common knowledge that what a thing has cost is no infallible criterion of its market value." In one municipality, the assessor testified that the land in the residential areas was assessed at 18 percent of its "true value," that commercial land was assessed at 30 percent of its "true value," and that industrial land was assessed at from 60 to 65 percent of "true value." In another municipality, the evidence strongly indicated that the most valuable commercial land was assessed at less than 5 percent of its "true value," and that the land in the residential areas was assessed at from 10 to 15 percent of "true value." In still another municipality, the assessor said that, in his opinion, the assessments on real property ranged from 12 to 40 percent of "true value." In some municipalities it was obvious that the assessments on real property were not equalized, and that the ratio of assessed value to "true value" was different in the different classes of real prop-

erty. In a taxing district where the value of real property is not uniformly assessed, it is hard to see how it could be possible to ascertain and determine the ratio of assessed value to "true value" by reliance upon a few scattered sales in the taxing district. In such municipalities, the ratio of the assessed value of real property to its "true value" as shown on the equalization table would seem to be unreliable for equalization purposes.

The total "true value" of the taxable real property, as ascertained and determined by the county board of taxation in each taxing district and as shown on the said equalization table, is one of the items used to compute the total "true value" of all the property, real and personal, subject to taxation, in a taxing district, R. S. 54:3-19. The total "true value" of all the *taxable personal property*, as determined by the county board of taxation in each taxing district, after revising and correcting the municipal assessor's tax lists and duplicates, is another item used to compute the total "true value" of all the property subject to taxation in a taxing district. The third item used to compute the total "true value" of all taxable property in a taxing district is the "true value" of second class railroad property, which is assessed by the Director of the Division of Taxation. These are the three classifications of property—real, personal, and second class railroad property—which are used to compute the total "true value" of all the property subject to taxation in a taxing district. The "true value" of each of the three classes of property is determined in a different manner: the "true value" of the real property is the "true value" shown on the equalization table prepared by the county board of taxation, R. S. 54:3-19; the "true value" of the personal property is that shown on the tax lists and duplicates as revised and corrected by the county board of taxation, N. J. S. A. 54:4-48, 49; and the "true value" of the second class railroad property is determined by the Director of the Division of Taxation, N. J. S. A. 54:29A-19. The sum of the "true value" of these three

different classes of property constitutes the total "true value" of all taxable property in a taxing district for the purposes of apportioning the county taxes. The total true value of all *taxable property in the county* is the sum of the "true value" of all the property in all the taxing districts in the county.

The county tax apportioned to each taxing district is apportioned among the taxpayers of the district on the basis of the valuations assessed and shown on the municipal tax duplicate as certified by the county board of taxation. The county tax rate for raising the county taxes in a municipality is determined by dividing the amount of county taxes apportioned to the municipality by the total value of all taxable property (real and personal) as assessed and shown on the municipality's tax duplicate, plus the assessed value of any second class railroad property in the municipality. The amount of county taxes an owner of property in a municipality must pay is determined by multiplying the assessed value of his property, as assessed and shown on the tax duplicate of his municipality, by the county tax rate for his municipality. The valuation assessments, therefore, must be uniformly assessed and equalized throughout the county, and within each municipality, if the burden of taxation for county purposes is to be fairly and justly distributed among the taxpayers of the county.

The Meaning of "Uniform Rules" in the Constitution.

The 1875 amendment to the 1844 *Constitution* required that property shall be assessed for taxation by uniform rules. The 1947 *Constitution* requires the same:

> "Property shall be assessed for taxation under general laws and by uniform rules." Art. 8, sec. 1, par. 1, N. J. Const.

In the case of *Baldwin Construction Co.* v. *Essex County Board of Taxation*, 16 N. J. 329, 340 (1954), the court said

that "the dominant principle of the new constitutional mandate is equality of treatment and burden. And this was of the essence and spirit of the old Constitution as well." In the case of *Trustees for Support of Public Schools* v. *City of Trenton*, 30 N. J. Eq. 667, 677, 678 (E. & A. 1879), the court, in an opinion written by Mr. Justice Depue, said:

> "The constitutional provision invoked relates only to the assessment of taxes, and in that respect it concerns only such equalization of the burdens of taxation as will result from the designation of the property which shall be the subjects of taxation, and the apportionment of the taxes thereon under general laws, by uniform rules and upon true valuations. • • • Its object was to secure to the people of the state the equalization of taxation, so far as was practicable, by requiring the imposition of taxes on property by general laws, on the principle of uniformity in the subjects of taxation and in valuations."

In the case of *Vreeland* v. *Mayor, etc., of Jersey City*, 43 N. J. L. 135, 138 (Sup. Ct. 1881), the court, in an opinion written by Mr. Justice Reed, said:

> "• • • uniform rules of the constitution mean rules which fix a common standard for the assessment of taxes for the state and all its political subdivisions."

In the case of *State Board of Assessors* v. *Central R. R. Co.*, 48 N. J. L. 146 (E. & A. 1886), Mr. Justice Scudder, in his opinion said, at pages 290 and 291:

> "Besides the requirement that property shall be assessed for taxes under general laws, it must also be assessed 'by uniform rules.' The word 'uniform' is defined as 'not variable'; 'not different'; 'having the same form or manner.' As it stands in this paragraph of the constitution, it means that rules must

not be variable in their application to the subject of taxation included in the classification of property. In the *Head Money Cases*, 112 U. S. 580, 594, S. C. 5 S. Ct. 247, in construing the clause of the constitution of the United States that 'all duties, imposts and excises shall be uniform throughout the United States,' the court said: 'The tax is uniform when it operates with the same force and effect in every place where the subject is found'; but that 'perfect uniformity and perfect equality of taxation, in all aspects in which the human mind can view it, is a baseless dream, as this court has said more than once,' citing *In re State Railroad Tax Cases*, 92 U. S. 575, 612, 23 L. Ed. 663. The rules for taxation must be uniform as to the property in the class on which it operates. As to railroad property, all property in that class must be assessed for taxes by the same rules."

And Mr. Justice Reed, in his opinion in the same case, at page 325 said:

"Uniformity requires an equality of operation upon all property of the same class. It means that each owner of property of the class shall bear his proportion of the tax levied upon all the property comprising the class."

And Mr. Justice Depue, in his dissenting opinion in the same case, at pages 338 and 341 said:

"It (the constitution) adds the further prescription that the assessment should be by uniform rules and at true values. The object of the constitutional provision was twofold: the equalization of the burden of taxation in the apportionment of taxes for state purposes among the several counties, and of taxes for state and county purposes among the minor

taxation districts, in which all taxes are in fact levied and collected; and also the equalization of the burden upon all those who are subject to taxation in the political division for the use of which taxes are laid,—in the state if for state purposes; in the county if for county purposes; and in the minor political divisions, (townships, cities or wards,) if for municipal or local purposes. By uniform rules is meant uniformity in the standard of valuation and rate of taxation. How that uniformity shall be attained will depend upon the purpose for which the particular tax is laid. If it be for state purposes, it must be at the rates of taxation uniformly applied in the state in taxation for state purposes; if for county or municipal purposes, at the same rate at which property is taxed for such purposes. *State* v. *Runyon*, 41 N. J. L. 99. As was said by Mr. Justice Dixon, the constitutional provision requires and is satisfied by such regulations as would impose the same percentage of its actual value upon all taxable property in the township for township purposes; in the county for county purposes, and in the state for state purposes. • • •

• • • • • •

• • • I have already said that uniformity in the rate of taxation is determined by the territory or political division for the use of which the tax is laid; that the constitution requires the same percentage of actual value upon all taxable property in the township if for township purposes, in the county if for county purposes, and in the state if for state purposes."

To the same effect see *Stratton* v. *Collins*, 43 N. J. L. 562 (Sup. Ct. 1881), and *Jersey City* v. *Martin*, 126 N. J. L. 353 (E. & A. 1941).

The United States Supreme Court expressed itself as to the meaning of "uniform rule" in the case of *Gilman* v. *City of Sheboygan*, 67 U. S. (2 Black) 510, 517, 17 L. Ed. 305 (1862). In that case the court said:

> "The court refer with approbation to the *Exchange Bank of Columbus* v. *Hines*, 3 O. St., 1. In that case the Supreme Court of Ohio say: 'Taxing is required to be by a "uniform rule"—that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment, as well as the rate of taxation. But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must extend to all property subject to taxation, so that all property may be taxed alike—equally—which is taxing by a uniform rule.'"

The same principle is set forth in 1 *Cooley, Taxation*, sec. 295, p. 612, as follows:

> "At the same time the valuation itself must be uniform in its results. Not only must the rate of taxation be uniform and equal, but also the valuation, • • •. Unequal valuation not only violates the uniformity requirement in the state constitutions, but also the equal protection of the laws provision in the Federal Constitution. • • • The valuation must be the same throughout the taxing district."

In sections 310 and 311, *Cooley, Taxation,* pp. 644, 645, it is stated that:

> "Sec. 310. Taxes may be unconstitutional, as a violation of the equality and uniformity requirement, because of territorial inequality. Uniformity of taxation, as required by state constitutions, extends to territorial uniformity as well as other uniformity. The question of territorial equality arises in connection with several different phases of taxation. First, lack of uniformity throughout the taxing district in that one part of the district is taxed and another part not taxed, or that a higher rate is imposed in one part of the district than in another part.
>
> Sec. 311. Uniformity of taxation, as provided for by state constitutions, is required throughout the territorial limits of the taxing district. • • • If the tax is a county tax, it must be uniform throughout the county."

In 51 *American Jurisprudence,* sec. 153, p. 203, the same principle is stated as follows:

> "One requirement with respect to taxation imposed by provisions relating to equality and uniformity, which has been introduced into some state constitutions in express language, is that taxation must be uniform throughout the political unit by or with respect to which the tax is levied. This means, for example, that a tax • • • for a county purpose must be uniform and equal throughout the county • • •."

In 84 C. J. S. *Taxation* §489(b), p. 926, it is stated that:

> "The function of equalization is the adjustment of aggregate valuations of property, • • • between the different taxing districts of the same county, so

> that the share of the whole tax imposed on each • • • district shall be justly proportioned to the value of taxable property within its limits, in order that one • • • district shall not pay a higher tax, in proportion to the value of its taxable property, than another. • • • The object to be accomplished by equalization is to produce relative equality among the several taxing districts."

THE COUNTY BOARD'S EQUALIZATION TABLE AND THE ASSESSOR'S TAX LIST.

Sections 54:3-13, 15, 17, and 19 of the Revised Statutes are part of Title 54, chapter 3. These sections of the statutes all relate to the same thing, and have a common purpose. They are *in pari materia*. Section 54:3-13 requires the county board of taxation to secure the taxation of all property in the county, both real and personal, at its true value, in order that all property, both real and personal, shall bear its full, equal, and just share of taxes. Section 54:3-17 requires the county board of taxation to determine the ratio or percentage of "true value" at which only the real property appearing on the tax assessment list of each taxing district is assessed by the assessor. This section also requires the county board to prepare an equalization table showing the aggregate value at which only the real property in each taxing district is assessed on a district's tax assessment list, and also showing the aggregate "true value" of only the real property in each taxing district as determined by the county board of taxation. Section 54:3-19 requires the county board of taxation to certify and send to each taxing district in the county a copy of the said equalization table. The county board's certification to the equalization table reads as follows:

> "We hereby certify, this (date), that the foregoing table shows the assessed valuations of real property, the ratio of assessments to true value, the

> percentages by which such valuations have been increased or decreased, and the true valuations as finally determined by us for the year."

Section 54:3-19 also provides that the aggregate "true value" of the real property in each taxing district as determined by the county board of taxation and as shown in the said equalization table shall be used in computing the total ratables of each taxing district for apportioning the county taxes among the various taxing districts of the county.

Sections 54:4-1, 12, 23, 35, 47, 48 and 49 of the Revised Statutes are part of Title 54, chapter 4. These sections of the statute all relate to the same thing, and have a common purpose. They are *in pari materia*. Section 54:4-1 requires the assessor of each taxing district to assess both the real and the personal property within his taxing district at its "true value." Section 54:4-12 provides the manner in which the assessor shall determine the "true value" of the personal property within his taxing district. Section 54:4-23 provides the manner in which the assessor shall determine the "true value" of the real property within his taxing district. Section 54:4-35 requires the assessor to file his tax assessment list with the county board of taxation. Section 54:4-47 requires the county board of taxation to revise, correct and equalize the assessed value of both the real and the personal property on the assessor's tax assessment list, and "in general do everything necessary for the taxation of all property in the county equally and at its true value." Section 54:4-48 requires the county board of taxation itself to enter all changes on the assessor's tax list, and also to cause each assessor to enter on his tax assessment list the corrected value assessed on both the real and the personal property of each property owner in the taxing district. Section 54:4-49 provides that the aggregate "true value" of the real property in a taxing district as determined by the county board of taxation, and as shown on the equalization table, plus the aggregate "assessed value" of

the personal property in the same taxing district as shown on the assessor's tax assessment list after revision and correction by the county board of taxation, shall be known as the "apportionment valuation." The assessed value of second class railroad property in a taxing district as determined by the Director of the Division of Taxation is added to the "apportionment valuation" of a taxing district to determine the total ratables in a taxing district for apportioning the taxes for county purposes, N. J. S. A. 54:29A-19.

Under chapter 3 of Title 54, sections 17 and 19, the county board of taxation is required to determine the aggregate "true value" of only the real property in each taxing district of the county. Under chapter 4, the county board of taxation is required to enter on each assessor's tax assessment list, or cause the assessor so to do, the "true value" of the real property, and also the "true value" of the personal property of each property owner in the taxing district. There are many decisions of the courts of New Jersey defining the meaning of "true value" as that term is used in the New Jersey statutes providing for the assessment and taxation of real and personal property, and wherever the term "true value" is used in relation to the assessment of property for taxation it must have the same meaning. Therefore, whenever the term "true value" is used in chapters 3 and 4 of Title 54, the meaning thereof is the same.

"True value" is an abstraction; hence, the Legislature must prescribe a uniform method for determining the "true value" of all property to be assessed for taxation so that the burden of the tax can be uniformly distributed. The statute provides that the judgment of the county board of taxation shall be the method for determining the aggregate "true value" of the real property in each taxing district as shown on the equalization table prepared by the county board of taxation pursuant to R. S. 54:3-17, 19. The statute also provides that the judgment of the county board shall be the method for the final determination of the "true value"

of the personal property in each taxing district as shown on the assessor's tax list and duplicate after revision, correction and equalization by the county board as required by sections 54:4-47, 48. This is the only method provided by law for determining the "true value" of the personal property for distributing the county tax. Since the statutory method for determining the "true value" of both the real property and the personal property in each taxing district is the judgment of the county board of taxation, all the property throughout the county subject to the county tax is assessed for the county tax by a uniform rule as required by the State Constitution.

It is contended by the Attorney General that the personal property assessments as shown on the assessor's tax list and duplicate after certification by the county board of taxation to the tax collector are not, within the intention of the statute, the judgment of the county board of taxation, nor do they reflect the county board's judgment. If the contention of the Attorney General is correct, then there would be no uniform rule for assessing property for the county tax, and the statutes providing for the apportionment of the county tax among the various taxing districts would be unconstitutional. In that event, there would be no law for assessing the county tax.

THE CONSTITUTION.

All acts relating to taxation and the enforcement thereof are subject to the constitutional requirement of equality and uniformity. The constitutional mandate that property shall be assessed for taxes by uniform rules is self-executing. No legislation is needed to give it effect; and anything done in violation thereof is absolutely void and of no effect. Consequently, no tax can be lawfully laid on property which is not determined by a valuation of the property by a uniform rule. *State (North Ward National Bank of Newark, Prosecutor)* v. *Mayor, etc., of City of*

Newark, 39 N. J. L. 380 (Sup. Ct. 1877), reversed on other grounds 40 N. J. L. 558 (E. & A. 1878); *Taylor* v. *Smith*, 50 N. J. L. 101 (Sup. Ct. 1887); *Sisters of Charity of St. Elizabeth* v. *Collector of Chatham Tp.*, 51 N. J. L. 89 (Sup. Ct. 1888), reversed on other grounds 52 N. J. L. 373 (E. & A. 1890); *Cooper Hospital* v. *Camden*, 68 N. J. L. 691 (E. & A. 1902); *Mayor, etc., of Jersey City* v. *Vreeland*, 43 N. J. L. 638 (E. & A. 1881); *Kraus* v. *City of Cleveland*, 96 N. E. 2d 314, 89 Ohio App. 504 (Ct. App. 1950), appeal dismissed 97 N. E. 2d 549, 155 Ohio St. 98 (Sup. Ct. 1951). In the case of *State Board of Assessors* v. *Central R. R. Co.*, 48 N. J. L. 146 (E. & A. 1886), Mr. Justice Parker said on page 298, that the taxing power was "controlled by constitutional limitations, which the people have adopted."

In 84 C. J. S. *Taxation* § 22, pp. 76, 77, appears the following statement:

> "Generally equality and uniformity of taxation are necessary under the provisions of the constitutions of many of the states • • •. Such requirements lie at the foundation of the taxing power of the state. • • • A constitutional requirement of equal and uniform taxation substantially covers the ground of the due process and equal protection clauses of the federal Constitution and state constitution, that is, the requirements of these provisions in tax matters are substantially similar, and what violates one of these provisions will contravene the other."

In the case of *Hamilton* v. *Adkins*, 250 Ala. 557, 35 So. 2d 183, 184 (Sup. Ct. 1948), certiorari denied 335 U. S. 861, 69 S. Ct. 133, 93 L. Ed. 407, the court said:

> "It seems clear that the constitutional principle of uniformity of taxation may be infringed by the method of administration of a property tax statute, even though the statute is fair on its face. Discrimination in the assessment or valuation by administra-

> tive officers may result in violation of the equality clause of the Fourteenth Amendment to the Federal Constitution. • • •
>
> To sum up the situation, the effect of the equal protection clause of the Federal Constitution and state uniformity requirements are substantially similar and what violates the one will contravene the other. 51 Am. Jur. sec. 169, p. 225."

In the case of *Commonwealth* v. *Girard Life Ins. Co.*, 305 Pa. 558, 158 A. 262, 83 A. L. R. 460 (Sup. Ct. 1932), affirmed *Girard Life Ins. Co.* v. *Commonwealth of Pennsylvania*, 287 U. S. 570, 53 S. Ct. 94, 77 L. Ed. 501 (1932), the Supreme Court of Pennsylvania said:

> "Our Constitution enjoins that 'all taxes shall be uniform, upon the same class of subjects.' The federal Constitution directs, 'Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' As applied to questions of taxation, the constructions of the two enactments run together. That which would violate one would generally contravene the other."

See also, *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23, 52 S. Ct. 48, 76 L. Ed. 146 (1931); *Southern R. Co.* v. *Watts*, 260 U. S. 519, 43 S. Ct. 192, 67 L. Ed. 375 (1923); 1 *Cooley, Taxation*, sec. 295, pp. 614, 615.

In the case of *In re Opinion of the Justices*, 332 Mass. 769, 126 N. E. 2d 795, 800 (Sup. Jud. Ct. 1955), the court, after referring to a provision in the State Constitution, said:

> "These words forbid the imposition upon one taxpayer of a burden relatively greater or relatively less than that imposed upon other taxpayers. If this is not the meaning of these words they mean

nothing at all. Words of the Constitution cannot be ignored as meaningless. * * *

Question 4 inquires whether the proposed act would violate the Fourteenth Amendment to the Constitution of the United States. That amendment provides in part that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.' Equal protection of the laws requires of course that all persons in the same category and in the same circumstances be treated alike. In *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments*, 284 U. S. 23, at page 28, 52 S. Ct. 48, at page 50, 76 L. Ed. 146, the court says, 'It is established that the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property.' " (Citing cases.)

In the case of *State Board of Assessors* v. *Central R. R. Co.*, 48 N. J. L. 146, at page 355 (E. & A. 1886), Mr. Justice Depue, in his dissenting opinion, said:

> "The construction of constitutional law is not for a day or an occasion, and the introduction of an erroneous principle of construction is an abiding wrong that will work incalculable mischief."

In the early and celebrated case of *Marbury* v. *Madison*, 1 Cranch 137, 2 L. Ed. 60 (1803), the United States Supreme Court said:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. * * * The government of the United States has been emphatically termed a gov-

ernment of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right. • • • That the people have an original right to establish, for their future government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. • • • To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. • • • The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable."

In the case of *Fairbank* v. *United States*, 181 U. S. 283, 21 S. Ct. 648, 45 L. Ed. 862 (1901), the United States Supreme Court said:

"• • • if written constitutions are to be regarded as of value, the duty of the court is plain to uphold the *Constitution*, • • •."

In 16 C. J. S., *Constitutional Law* §3, pp. 23 and 25, it is stated that a constitution serves to protect the people against arbitrary power, and that the constitution of a state is the supreme law within the realm and sphere of its

authority. If our State and Federal Constitutions are not worthy of being upheld, then neither are the laws, nor the faith, principles, and ideals which we are proud to call the American way of life. But, if the constitution is to stand, then every expediency, thing, and political interest must conform to constitutional requirements, or else American freedom will be forced to surrender to the menacing challenge of some other belief, or mode of living. "In this country the most reliable source of public policy is to be found in the federal and state constitutions." 3 *Sutherland, Statutory Construction* (3d ed.), sec. 5904, p. 131.

CONCLUSIONS.

The statutes of New Jersey require that all taxable property—real and personal—shall be assessed for taxation for the support of the county government at its "true value." The Constitution of New Jersey requires that all taxable property—real and personal—shall be assessed for taxation by uniform rules.

The Bergen County Board of Taxation apportioned the amount to be raised by taxation for the support of the Bergen County government for the year 1959 among the 70 municipalties of Bergen County. The apportionment was made on the basis of the aggregate tax ratables in each of the 70 municipalities. The Bergen County Board of Taxation used the aggregate "true value" of the real property in computing the aggregate tax ratables in each municipality; but it used only a small percentage of the aggregate "true value" of the personal property. The Bergen County Board of Taxation determined by its own judgment the aggregate "true value" of the real property in each municipality; but it did not determine the aggregate "true value" of the personal property. It used the values assessed on personal property by the municipal assessor in each municipality, and took the aggregate of those assessed values.

In some taxing districts, some classes or kinds of personal property subject to taxation were not assessed at any value. It was common practice in some taxing districts not to assess the household goods of tenants. In most instances, the "true values" of the personal property were merely the random guesses of the municipal assessors, or the values given them by the property owners, and the personal property was then assessed at a small percentage of those values. According to the testimony of the municipal assessors themselves, the ratio or percentage of the assessed value of the personal property to its presumed "true value" varied widely in the different taxing districts, and even within a single district. In one municipality, according to the testimony of the assessor, the assessed value was 7 percent of its presumed "true value." In other municipalities the percentages of the assessed values to the presumed "true values" were 10 percent, 13 percent, 15 percent, 20 percent, 25 percent, *et cetera*. There was a complete lack of uniformity in assessing the value of personal property as between the taxing districts, and, in general, within each district. In the Village of Ridgefield Park, however, both the real and the personal property were assessed at their full "true value," according to the best of the assessor's ability and judgment, after a diligent inquiry and investigation had been made.

The total assessed value of personal property in Bergen County, for the year 1959 was $135,847,194. Its "true value," according to the testimony of the assessors, was $513,208,044. Its "true value," according to the Ninth Report of the Commission on State Tax Policy, was $946,709,000. The evidence clearly demonstrated the effect on the distribution of the county tax by using the values of personal property as assessed by the municipal assessors at a percentage of "true value." It indicated by this demonstrative evidence that Ridgefield Park was apportioned $15,653.94 more of the Bergen County tax than it would have been if the aggregate "true value" of the per-

sonal property had been used in making the apportionments instead of a percentage thereof.

It is obvious that the residential districts of Bergen County received a greater proportion of the 1959 county taxes than they should have received, and that the real property owners in Bergen County—especially the home owners—are carrying a much larger percentage of the burden of the Bergen County taxes than is intended by the statutes.

The Commission on State Tax Policy in its Ninth Report to the Governor and to the Legislature said:

> "The commission concludes that 100 per cent assessment of real and personal property would result in reductions in the burden on residential property. Such a reduction would be attributable, in the great majority of taxing districts, to a shift of the tax burden to business personal property which is now taxable but is not taxed or taxed relatively lightly as compared with real estate."

The Sixth Report of the Commission on State Tax Policy of New Jersey, which was submitted to the Governor and to the Legislature in February 1953, states that property valuations and assessments in New Jersey are marred by the grossest inequities, and that the taxation on personal property in New Jersey is both a "scandal and a hazard." The report is entitled *A Century of Inequities* in the taxation of property in New Jersey.

This practice of discrimination in favor of the personal property owners against the real property owners in Bergen County has been habitual, and the undervaluation of the personal property has been deliberate and intentional. This manner of distributing the county tax among the county taxpayers is obviously a violation of the Constitution of New Jersey and also of the Constitution of the United States.

In 51 Am. Jur., sec. 170, p. 225, the constitutional principle involved is stated as follows:

> "In accordance with the general principle that equal protection of the laws may be denied by the improper administration of a constitutional statute, it is well established that the constitutional principle of uniformity of taxation may be violated by the manner in which a property tax statute, fair on its face, is administered. Thus, inequality or discrimination in the assessment or valuation by administrative officers of particular kinds of property or the property of particular taxpayers may result in a violation of the requirements of the equal protection clause of the Fourteenth Amendment to the Federal Constitution or the equality and uniformity provisions of the state constitutions."

And at page 229 in 51 Am. Jur., sec. 172, it is stated that the intentional valuation of a particular kind of property at a higher percentage of its actual value than that at which other kinds of property are valued, or the assessment of the property of certain taxpayers by a different method from that which is employed for other taxpayers of the same kind is unlawful, and cannot be upheld.

In 1 *Cooley, Taxation*, sec. 302, pp. 636, 637, the following principle of law is stated:

> "The act of tax officers in habitually assessing one class of property at its full value and another class of property at less than its full value, although not warranted by any statute, violates the constitutional requirement as to uniformity."

The United States Supreme Court followed this constitutional principle of law quoted from *Cooley, Taxation*, in the case of *Cummings* v. *Merchants' Nat. Bank of Toledo*, 101 U. S. 153, 25 L. Ed. 903 (1880).

The Bergen County Board of Taxation prepared the 1959 equalization table as required by R. S. 54:3-17. The table shows the ratio or percentage of the "true value" of the real property in each taxing district at which it was assessed. The table, therefore, indicates the percentage by which the assessed value of the real property should be increased or decreased in order to correspond to its "true value." The county board ascertained the ratio or percentage of the "true value" of the real property by a uniform formula or method which it used for every taxing district of the county. By the use of this formula, the ratio or percentage at which the real property in Ridgefield Park was assessed of its "true value" was approximately 107.35 percent. But, the Bergen County Board of Taxation did not show this ratio or percentage on the equalization table for Ridgefield Park. Instead, it showed Ridgefield Park's aggregate assessed valuation to be the aggregate "true value" of the real property. The aggregate assessed value of the real property in Ridgefield Park was $57,495,200. If the county board of taxation had used the same formula or method for determining the ratio or percentage of "true value" at which the real property in Ridgefield Park was assessed for the year 1959 as it used for every other taxing district, it would have shown on the equalization table that the aggregate "true value" of the real property in Ridgefield Park was approximately $53,756,262. As a result of this failure to use a uniform method for determining the aggregate "true value" of the real property in Ridgefield Park, the village was discriminated against, and was forced to pay between $10,000 and $11,000 more in county taxes than it should have been required to pay.

The taxing district for the apportionment of the county tax is the county. The method used by the county board of taxation for apportioning the county tax must be applied uniformly throughout the county. There cannot be two rules of apportionment for the same tax in the same dis-

trict; if there could be, there might be any number, and in effect there would be none at all. 2 *Cooley, Taxation* (4th ed.), sec. 541, p. 1189.

If the provisions of the statute which provide for assessing the value of property for the county tax and apportioning that tax among the various municipalities of the county is constitutional, then the law has not been complied with insofar as the Village of Ridgefield Park is concerned. Its improper administration in the manner shown in this case is unconstitutional insofar as it affects the Village of Ridgefield Park. If, on the other hand, the provisions of the statute do not provide a method for assessing property for the county tax by a rule or method which is applicable uniformly throughout the county, or if it is impossible to administer the law in assessing property for the county tax in compliance with the constitutional requirements of uniformity, then the law itself is unconstitutional. Whatever the situation may be, the Bergen County tax apportioned to the Village of Ridgefield Park is unconstitutional and void for the reasons heretofore given. Therefore, the Bergen County equalization table for the year 1959, insofar as it affects the Village of Ridgefield Park will be set aside as unconstitutional and void; the Bergen County table of aggregates for the year 1959, insofar as it affects the Village of Ridgefield, will also be set aside as unconstitutional and void; and the Bergen County taxes apportioned to the Village of Ridgefield Park for the year 1959, together with all things touching and concerning the same insofar as they affect the Village of Ridgefield Park will be set aside as unconstitutional and void.

MANDAMUS.

It has been previously pointed out that, under the statutes of New Jersey, the value at which property is assessed for taxation is determined by the judgment of the municipal assessors and the judgment of the county boards of taxation. Whenever the judgment of the county board

disagrees with that of the assessor, the judgment of the county board is superior to that of the assessor; and it is the judgment of the county board which determines the "true value" of the property assessed. The assessment of property at its "true value" is a *quasi*-judicial act, 3 *Cooley, Taxation* (4th ed.), sec. 1052, p. 2127; 4 *Cooley, Taxation* (4th ed.), sec. 1601, p. 3181; *Weyerhaeuser Timber Co.* v. *Pierce County, supra; Colonial Life Insurance Co. of America* v. *State Board of Tax Appeals, supra.* In the early case of *United States* v. *Lawrence*, 3 Dall. (U. S.) 42, 1 L. Ed. 502 (1795), the United States Supreme Court said that it had "no power to compel a judge to decide according to the dictates of any judgment but his own." In the case of *Ex parte Denver and Rio Grande R. Co.*, 101 U. S. 711, 25 L. Ed. 872 (1879), the United States Supreme Court held that the writ of *mandamus* is never used to control the discretion and judgment of an inferior tribunal acting within the scope of its judicial authority. In the case of *Gibbs* v. *Hampden County Com'rs.*, 19 Pick. (Mass.) 298 (Sup. Jud. Ct. 1837), the plaintiff was seeking a writ of *mandamus* to compel the assessment commissioners to abate his taxes. The court said "although it is within the province of this Court to require the commissioners to decide the question, yet we have no power to decide it for them or to determine what decision they shall make. No judicial officer, in determining a matter legally submitted to his discretion, can ever be required to be governed by the dictates of any judgment but his own." In *Sears* v. *Vary*, 208 Mass. 208, 94 N. E. 467 (Sup. Jud. Ct. 1911), the court held that assessors will not be compelled by *mandamus* to abate a tax on personalty in the absence of a showing that they have not used their best judgment in assessing the tax. The court in its opinion said, "There is no reason to doubt that they (the assessors) decided the questions raised by the application in accordance with their view of the law and the facts before them. This court has no right to command them to decide otherwise. (citing cases) This is so because it is

their right and duty to decide according to their own best judgment." In 4 *Cooley, Taxation* (4th ed.), sec. 1601, p. 3181, it is stated that: "No court can decide for them (assessors) what their judgment ought to be." And, in 3 *Cooley, Taxation* (4th ed.), sec. 1143, p. 2296, the principle of law involved is stated as follows:

> "Valuation is in its nature a judicial act, and the assessors in making it are entitled to the customary protection which the law accords to officers exercising corresponding judicial functions. The person injured by their errors, committed without fraud or malice, has in general only such remedy as the statute may afford him. And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him only with a just proportion of the tax."

In the case of *People ex rel. Jones* v. *Webb*, 256 Ill. 364, 100 N. E. 224, 227 (Sup. Ct. 1912), the court was considering a petition for *mandamus* by a taxpayer seeking to compel the board of tax review to list for taxation certain omitted personal property from the tax lists. The court said:

> "Mandamus does not create the duty or confer the power to perform it, but is designed to coerce action along the lines marked out by the law for the person against whom it is directed. It does not issue to compel action in matters about which the officer has a discretion as to whether he will act or not, but it may issue for the purpose of compelling action one way or the other in a matter in which the officer has a discretion as to which way he will act. It is sometimes said that the writ will not issue to compel the performance of a judicial duty. This statement is not quite accurate. A judicial duty may be enforced where the right is clear and the judicial officer, if he obey the law, has no discretion but must do a particular thing which the law requires of him. A better

statement of the law seems to be that while a judicial officer, or one exercising discretion or authority, may be compelled to act and to proceed to the performance of his duty, he cannot be controlled in his judgment or compelled to exercise his discretion in a particular manner by means of this writ. *Cooley on Taxation*, p. 1352, and cases there cited. Applying these general principles, the law is well settled that, where assessing officers fail and neglect in the performance of their duty, they may be compelled to act, but, where it is necessary to exercise judgment and discretion as to valuations and the like, the court will not decide such questions for the officers and direct by mandamus what the judgment is or should be. In other words, officers whose duty it is to value and assess property may be compelled by mandamus to proceed in the discharge of their duties and make an assessment, but the court would not undertake to give directions as to the valuation that ought to be placed upon the property to be assessed, unless the valuation was so low as to show that the assessing officer was making a fraudulent under-valuation."

It is practically impossible, therefore, to equalize the valuation assessments on property, real and personal, throughout Bergen County by ordering each of the 70 municipal assessors to assess property within their respective taxing districts at its "true value." Furthermore, even if the equalization of property values might result from such an order, the method thus employed to obtain equalization would not be in accordance with the constitutional requirement that property shall be assessed by a uniform rule; equalization by that method would happen purely by chance.

Miss Moody, the administrative clerk of the Bergen County Board of Taxation, has been with the board for 42 years. She is familiar with the administrative practice and records of the county board, and she is a very competent employee. She testified that the statute did not give suffici-

ent time for the county board of taxation to equalize the personal property assessments throughout Bergen County. She said that the board was capable of equalizing the valuation assessments on personal property throughout the county provided it was given sufficient time to do so and an adequate budget. She said that the Bergen County Board of Freeholders had refused the county board of taxation sufficient money for it to properly perform its duties. In addition to these factual obstacles, the Attorney General of New Jersey advised the Bergen County Board of Taxation that the statutes do not require it to equalize the personal property assessments. There is no evidence that the Bergen County Board of Taxation is unwilling to equalize the valuation assessments on personal property. If, therefore, an order should be made directing the Bergen County Board of Taxation to equalize the valuation assessments on personal property throughout the county, then there should also be an order directing the Bergen County Board of Freeholders to supply the county board of taxation with sufficient funds to perform that duty. However, if the statutes do not permit the Bergen County Board of Taxation sufficient time to equalize the personal property assessments, *i. e.*, that it is impossible to administer the law in accordance with the constitutional requirement, then the law is unconstitutional, and the courts will not order the enforcement of an unconstitutional law.

If the statutes provide an appeal to the Division of Tax Appeals from the failure of the Bergen County Board of Taxation to equalize the valuation assessments on personal property throughout the county, then the writ of *mandamus* should not issue to compel the county board to equalize the personal property assessments because there is another full and adequate remedy provided by statute. *Consolidated Cigar Corporation* v. *Brunner,* 133 N. J. L. 77 (Sup. Ct. 1945). Under justifiable circumstances, it has been held that the court may issue a writ of *mandamus* to compel the county board to use their honest discretion and judgment to equalize assessments on personal property, 84 C. J. S.

Taxation § 581, p. 1156. But, the court must consider the consequences of granting the writ, and whether or not the writ can be enforced. In the case of *Evans* v. *Villani*, 19 N. J. Super. 86 (App. Div. 1952), the court said:

> "The courts will act in view of all of the facts and circumstances, according due consideration to the equities, the efficacy or futility of the judgment and to whether the mandatory judgment will conduce to substantial justice or, on the contrary, tend toward injustice, hardship, or oppression. • • • They will particularly envision the public interests which may be implicated."

The Constitution of New Jersey provides that:

> "The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, • • •." Art. III, par. 1.

It is not the duty of the judicial branch of the government to supervise the administration of the laws. That function should be performed by the executive branch of the government. A member of a county board of taxation who shall willfully or intentionally fail, neglect or refuse to comply with the Constitution or laws of this State relating to the assessment and collection of taxes, or to perform a duty prescribed by the statute, may, after a proper hearing, be dismissed by the Governor, R. S. 54:3-28. In the case of *Wayman* v. *Southard*, 10 Wheat. 1, 22-25, 6 L. Ed. 253 (1825), the United States Supreme Court said "that the legislature makes, the executive executes, and the judiciary construes the law; • • •, and the precise boundary of this power is a subject of delicate and difficult inquiry, into which a court will not enter unnecessarily."

There is much confusion in our State regarding the assessment of property for the purpose of taxation. This

confusion stems both from the statutes and from the administration of the law; and flagrant injustice has resulted. In its Sixth Report the Commission on State Tax Policy said:

> "In this sense, personal property is not now and never has been truly a part of the general property tax base. But the letter of the law which places it within that base has caused negotiation to be substituted for taxation, and an unhealthy atmosphere of caprice to take the place of clear-cut official responsibility. The result, to be expected under such conditions, has been discriminatory, unequal and sometimes arbitrary assessments."

The present confusion can only be aggravated if the judicial branch of the government assumes any of the duties and responsibilities which the Constitution has delegated to either the executive or the legislative branch. The inequities in taxation would not be corrected. The following jingle, although jocular, nevertheless expresses the real gravity (it is no laughing matter) of the unsettled conditions existing in New Jersey regarding the assessment of property for taxation:

> "Taxes milks dry, but, neighbor you'll allow
> Thet havin' things onsettled kills the cow."

This part of the suit which seeks a *mandamus* judgment against the Bergen County Board of Taxation will be continued until Friday, June 24, at 10 o'clock in the forenoon. I would like the attorneys to file with the court, on or before June 3, briefs on the questions raised in this part of the opinion on the legal right or equity of the court to order the Bergen County Board of Taxation to equalize and secure the assessment of personal property at its "true value." I also would like the attorney for the plaintiff to specify particularly, on or before June 3, what he thinks this court should order the Bergen County Board of Taxation to do.

Opinions and Judgments of Superior Court, Law Division.

SUPERIOR COURT OF NEW JERSEY,

LAW DIVISION.

VILLAGE OF RIDGEFIELD PARK, *et al.*,
Plaintiffs,

v.

BERGEN COUNTY BOARD OF TAXATION, *et al.*,
Defendants.

Decided June 7, 1960.

Messrs. MORRISON, LLOYD & GRIGGS (Mr. WILLIAM R. MORRISON, appearing) attorneys for plaintiffs.

Mr. THEODORE I. BOTTER, Deputy Attorney General, appeared for defendant Bergen County Board of Taxation (Mr. DAVID D. FURMAN, Attorney General, attorney).

WAESCHE, J. S. C.

This opinion deals with that part of this suit which is in lieu of the prerogative writ of *mandamus*. The plaintiffs are seeking a judgment of this court in lieu of *mandamus* which, in general, will peremptorily command and strictly enjoin the Bergen County Board of Taxation to equalize the assessed value of all taxable real and personal property of Bergen County so that each taxing district of Bergen County shall bear its full, equal and just share of the Bergen County taxes; and to further order the Bergen County Board of Taxation to do everything required or permitted by law which may be necessary to secure the taxation of all taxable property in Bergen County at its true value in order that all taxable property in Bergen County shall bear its full, equal and just share of taxes. Some of the principal features

of this troublesome problem were discussed in the opinion filed in this cause on April 12, 1960. *Village of Ridgefield Park* v. *Bergen Cty. Bd. of Taxation*, 61 N. J. Super. 170 (Law Div. 1960). In that opinion, attention was directed to the fact that it had been incontestably established by the evidence that the Bergen County Board of Taxation made no effort whatever to equalize the personal property assessments; and that, as a result, the Bergen County taxes had not been fairly and justly apportioned among the taxing districts of Bergen County. By reason of this failure to equalize the personal property assessments, some taxing districts have been paying much less than their full and just share of the county taxes, while other districts have been paying considerably more than their full and just share. The plaintiffs seek to effectuate an improvement of this inequitable condition by an order of this court.

The 1875 amendment to the 1844 Constitution of New Jersey required that property *shall* be assessed for taxation by uniform rules. The Constitution of 1947 also specifically requires that:

> "Property shall be assessed for taxation under general laws and by uniform rules." Art. VIII, sec. I, par. 1.

The Constitution of New Jersey is the source of all power and authority in the government of this State. The constitutional provision that property "shall" be assessed for taxation by "uniform rules" is a solemn mandate of the sovereign people of New Jersey themselves which is directed to all branches and divisions of our State Government. The New Jersey Constitution itself requires every state officer, before entering upon the duties of his office, to take an oath or affirmation to support the Constitution and to perform the duties of his office faithfully, Art. VII, sec. I, par. 1. The word "shall," as used in this section of the Constitution, means "must." In the case of the *Application of George C. Braden*, 105 Ohio App. 285, 148 N. E. 2d 83 (Ct. App.

1957), appeal dismissed 167 Ohio St. 548, 150 N. E. 2d 294 (Sup. Ct. 1958) it was held that the word "shall" in the Constitution of Ohio means "must." And in the case of *State ex rel. Gouge* v. *Burrow*, 119 Tenn. 376, 104 S. W. 526 (Sup. Ct. 1907), the court held that the word "shall" in the Constitution of Tennessee is equivalent to "must." The opinion in the Tennessee Supreme Court also said:

> "The provisions of these solemn instruments [constitutions] are not advisory, or mere suggestions of what would be fit and proper, but commands which must be obeyed. • • • The supremacy and permanency of republics depend upon the maintenance of the fundamental law, in its integrity, as written in Constitutions adopted by the people; and it is the solemn duty of all those temporarily vested with power, in all departments of the state, to do this. The necessities of a particular case will not justify a departure from the organic law. It is by such insidious process and gradual encroachment that constitutional limitations and government by the people are weakened and eventually destroyed. It has been well said:
>
> 'One step taken by the Legislature or judiciary in enlarging the powers of government opens the door for another, which will be sure to follow, and so the process goes on until all respect for the fundamental law is lost, and the powers of government are just what those in authority please to make or call them.'
>
> *Oakley* v. *Aspinwall*, 3 N. Y. 547, 568."

See, also, the case of *Jones* v. *Freeman*, 193 Okla. 554, 146 P. 2d 564 (Sup. Ct. 1943).

In 11 Am. Jur., sec. 69, p. 686, this constitutional principle is stated as follows:

> "It is the general rule to regard constitutional provisions as mandatory, and not to leave any dis-

> cretion to the will of a legislature to obey or to disregard them. • • • The use of the word "shall" is generally considered as an indication of the mandatory character of the provision."

In the case of *Carow* v. *Board of Education of City of New York*, 272 N. Y. 341, 6 N. E. 2d 47 (Ct. App. 1936), the court held that the Legislature was under a duty to provide the machinery required to carry out the mandate of the constitution of the state. In 16 C. J. S. Constitutional Law §65, p. 178, appears the following statement:

> "Mandatory provisions of a constitution are binding on the legislature, and it is under obligation to perform duties imposed on it by the constitution."

The Legislature is therefore under a solemn obligation to provide adequate means for assessing property for taxes by a uniform rule. No one may waive the public interest and welfare as determined by the Constitution. In the case of *Fischer* v. *Twp. of Bedminster*, 5 N. J. 534, 541 (1950), our Supreme Court said:

> "In the construction of the Constitution, we are enjoined to effectuate the intent of the people in adopting it; and this is to be found in the written expression. • • • There is • • • no room for construction where the expression is plain and unambiguous."

In the case of *Hargraves, Mayor* v. *Solomon*, 178 Ark. 11, 9 S. W. 2d 797 (Sup. Ct. 1928), the court said:

> "The general rule is well established that constitutional provisions are to be construed as mandatory unless by their express terms or by necessary implication a different intention is manifest. • • • Our duty is to carry out the provisions of the Constitution as indicated by its plain language."

The object of the constitutional provision requiring the assessement of property for taxation by uniform rules is to secure to the people of this State the equalization of the tax burden levied on property insofar as it is practical. In the case of *Trustees for Support of Public Schools* v. *City of Trenton*, 30 N. J. Eq. 667, 677, 678 (E. & A. 1879), in an opinion written by Justice Depue, the court said:

> "The reasons which induced the adoption of this constitutional provision are deep-seated in principles of public policy. Its object was to secure to the people of the state the equalization of taxation, so far as was practicable, by requiring the imposition of taxes on property by general laws, on the principle of uniformity in the subjects of taxation and in valuation."

That a compliance with this provision of the Constitution is highly important to the welfare of the people is so plainly obvious as to make it unnecessary to discuss. The courts of New Jersey have said that the framers of the Constitution especially made this provision self-executing, because of its special importance to the people individually and collectively. No statute, therefore, is necessary to effectuate this constitutional provision. It means that no valuation assessment can be made lawfully on property except by a uniform rule even in the absence of enabling legislation; and it also means that any assessment levied in violation of this constitutional mandate is absolutely void *ab initio*. Hence, the mode of assessing the value of both real and personal property for the county tax must be uniform throughout the county. Since the constitutional provision is mandatory, the legislative, executive, and judicial branches of the government, all creatures of the Constitution, are under a duty to comply with this constitutional command. In the case of *State, North Ward National Bank of Newark, pros.* v. *City of Newark*, 39 N. J. L. 380, 391

(Sup. Ct. 1877), reversed on other grounds 40 N. J. L. 558 (E. & A. 1878), the Supreme Court said:

> "That it was intended by this amendment [the 1875 amendment] to establish a uniform rule, which should be the only rule for assessing property, is so plainly manifested in the language used as to admit of no doubt."

In the case of *Jersey City* v. *Vreeland*, 43 N. J. L. 638 (E. & A. 1881), the court said:

> "This constitutional provision executed itself, * * *. Under this constitutional provision no tax can lawfully be laid upon property which is not determined * * * by a valuation of the property with respect to which it is laid upon a uniform rule of valuation * * *."

In the case of *Sisters of Charity of St. Elizabeth* v. *Chatham Tp.*, 51 N. J. L. 89 (Sup. Ct. 1888), reversed on other grounds 52 N. J. L. 373 (E. & A. 1890), the Supreme Court said:

> "That amendment [the 1875 amendment] was self-executing; * * *. It is addressed not merely nor primarily to the legislature but directly to the assessing officers, * * *."

See also the case of *Taylor* v. *Smith*, 50 N. J. L. 101 (Sup. Ct. 1887), and *Cooper Hospital* v. *Camden*, 68 N. J. L. 691 (E. & A. 1902).

Although the Legislature is under a solemn obligation to provide adequate means for assessing the value of real and personal property for taxation by a uniform rule, the mere fact that such legislation may be inadequate does not render the constitutional provision ineffective, *People* v. *Carroll*, 3 N. Y. 2d 686, 148 N. E. 2d 875 (Ct. App. 1958); *Kraus* v. *City of Cleveland*, 89 Ohio App. 504, 96 N. E. 2d

314 (App. Ct. 1950), appeal dismissed 155 Ohio St. 98, 97 N. E. 2d 549 (Sup. Ct. 1951); 16 C. J. S. *Constitutional Law* § 48, p. 144; 11 Am. Jur., sec. 75, p. 692. The Constitution itself directly commands that assessors and county boards of taxation shall secure the assessment of the real and personal property in the county by a uniform rule in order that all taxable property shall bear its full, equal and just share of taxes. In the case of *People ex rel. Bracher, County Treasurer* v. *Orvis*, 301 Ill. 350, 133 N. E. 787, 24 A. L. R. 325 (1922), the Supreme Court of Illinois said:

> "Equalization of assessments is the adjustment of aggregate values of property as between different taxing districts, so that the value of the whole tax imposed upon each taxing district shall be justly proportioned to the value of the taxable property within its limits, in order that one county or taxing district shall not pay a higher tax in proportion to the value of its taxable property than another. • • •
>
> This provision of the Constitution is a mandate issued to taxing authorities to require uniformity of taxation. This principle lies at the foundation of all taxing power, for the reason that one man should not be compelled to pay a greater proportion of taxes according to the value of his property than another."

In the case of *People* v. *Southwestern Bell Telephone Co.*, 377 Ill. 303, 36 N. E. 2d 362, 364 (Sup. Ct. 1941), the court said:

> "This court has always recognized that all laws relating to taxation and the enforcement thereof by taxing bodies are subject to the requirements of equality and uniformity of taxation. We have construed the command for uniformity to mean that taxation must be uniform as to the class upon which it operates and that the uniformity demanded applies to property of like kind and character and similarly situated."

In the case of *People ex rel. Tedrick* v. *Allied Oil Corp.*, 388 Ill. 219, 57 N. E. 2d 859 (Sup. Ct. 1944), the court said:

> "That equality and uniformity in taxation, in accordance with the value of the property is guaranteed by the constitution of this State and that of the United States, cannot be denied. * * * The constitution requires that one person shall not be compelled to pay a greater proportion of the taxes according to the value of his property than another and does not permit the valuation by taxing officials of one piece of property at a certain proportion of its true value and other property in the same taxing district at a substantially less or greater proportion of its true value."

In 3 *Cooley on Taxation*, sec. 1195, p. 2390, it is stated as follows:

> "Equalization of assessments has, for its general purpose, to bring the assessments of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax. To accomplish this purpose assessment rolls are equalized by county courts, boards of supervisors or commissioners, and the aggregate of the county assesssments by a state board established for the purpose. This is not done by changing individual assessments, but by fixing the aggregate sums for the several districts at what, in the opinion of the board, they should be, so that general taxes may be levied according to this determination, instead of on the assessor's footings. The power to create boards of equalization for such purposes is well settled, and a statutory provision requiring equalization is mandatory so as to make a failure to comply a jurisdictional defect."

In the opinion previously filed in this case there is a discussion of the power and the duty imposed by the Legislature on county boards of taxation to equalize the assessed value of both the real and the personal property throughout the county. To that discussion is added this brief supplement. Chapter 144 of the Laws of 1883, p. 192 provided that the county board of assessors should compute and ascertain the aggregate value of the taxable real and personal property contained in the tax duplicates of the several assessors. If it appeared to them that the value of the property contained in any duplicate was relatively less than the value of other property in the county, the board of assessors could adjust the proportion and add thereto such percentage of the aggregate value of the real and personal property as appeared to them just and proper. This provision of the act of 1883 was included in the General Tax Act of 1903, 4 C. S. 5075. Section 21 of the Laws of 1903, p. 407; 4 C. S. 5102, provided that the county board of assessors should make a careful comparison of the tax duplicates; and, for the purpose of apportioning the county taxes, they should add to the total assessed valuation shown on any duplicate such amount as would justly equalize the county tax burden. The county board of assessors was succeeded by the county board of taxation, L. 1906, p. 210; 4 C. S. 5115, sec. 37(p). The county board of taxation was given the power of equalize the assessed value of all property in the respective taxing districts. 4 C. S. 5118, secs. 37(s) and (t). In the case of *Englewood* v. *Hoppe*, 54 N. J. L. 544 (Sup. Ct. 1892), the Board of Assessors of Bergen County added to the total valuation assessments of the real and personal property of Englewood a lump sum. The court held that the Board of Assessors of Bergen County had the right to increase the aggregate valuations of the real and personal property but such power must be exercised in strict compliance with the provisions of the statute. It thus appears that county boards of taxation, under the Constitution and by statute, have been given the power and duty to

equalize the valuation assessments on both real and personal property throughout the county. The grant of the authority to equalize carries with it the authority to perform whatever necessary acts are incident thereto, *City of Passaic* v. *Passaic County Board of Taxation*, 18 N. J. 371 (1955).

In his inaugural address as Governor of New Jersey, Woodrow Wilson said that New Jersey had absolutely no uniform system of assessment, and that our whole system of taxation needed overhauling from top to bottom. Governor Driscoll, in his inaugural address to the Legislature on January 21, 1947, said that Woodrow Wilson's statements were as true in 1947 as they were when made in 1911. The reports of the Commission on State Tax Policy show that the statements of former Governor Wilson are as true yet today as they were when made nearly fifty years ago. From a study of the reports of the Commission on State Tax Policy one can only conclude that it has been much longer than 50 years since county taxes have been fairly and justly apportioned among the taxing districts of any county in New Jersey. In fact, no attempt even is made in any county to apportion county taxes among the county's taxing districts on the basis of a uniform method of valuation applicable to all the taxable property throughout the county. That the Constitution requires the assessment of personal property by a rule uniformly applied throughout the county for apportioning county taxes is looked upon as a mere noble experiment. But this a dreadfully erroneous point of view. This provision of the Constitution is of the highest importance to the welfare of the people of this State; and the failure to comply with the constitutional command is not due to the apathy or indifference of the public. Until recently, the people have had very little knowledge or understanding of this highly inequitable and unjust condition. The method of assessing the value of property for apportioning county taxes is so exceedingly complex that it is practically impossible for the public to realize the existence of any injustice in the distribution of county taxes. The

ever increasing burden of taxation finally brought this situation somewhat to their attention. If the tax burden is evenly and equitably distributed, it might be endured without noticeable damage to our social or economic structure; and should it become too heavy, the public budget can be reduced to a point in keeping with the public's ability to pay. A ship may be fully loaded down to her Plimsoll marks, and still safely navigate the open seas, provided the cargo within her hull is evenly distributed and securely stowed. But when the cargo is loaded unevenly, or when it is shifted so that its weight is dangerously unbalanced, then the ship may be in imminent danger of floundering, or even of sinking. An unequal and inequitable distribution of the tax burden could be just as perilous to the State. As Chief Justice Marshall said in the case of *McCulloch* v. *Maryland*, 4 Wheat. 316, 431, 4 L. Ed. 579 (1819), "the power to tax involves the power to destroy."

There is much evidence in New Jersey of irreparable damage which has resulted from unequal and unjust taxation. People, commerce and industry try to avoid and to move away from areas where it exists in order to escape its ruinous consequences. The constitutional provision requiring that property be assessed for taxation by uniform rules is intended to provide adequate protection against this menace. To uphold the Constitution in this respect is the problem this court faces in arriving at its decision in this case. It is ridiculous to have a Constitution unless it is upheld. There is no firmer test of our democratic form of government than the fair sharing of the cost of government.

It has been said that tomorrow marches by on the feet of the children of today. We should prepare the way for them by upholding the Constitution, as our forbears, in their time, provided a way for protecting our security and happiness by framing the Constitution. The primary responsibility for assessing property for taxation by uniform rules lies with the legislative and with the executive

branches of the government. If the legislative and the executive branches of the government should fail to support the principle of equal and fair distribution of taxes, the judicial branch will then be standing alone in its efforts to uphold the Constitution in this respect. In the event that should happen, the constitutional ideal of equal taxation will collapse, and one of freedom's stars will fall from the firmament of our American democracy, resulting in a serious loss of faith in our Constitution. A court cannot substitute its authority under the Constitution for a declination of the will of any other branch or division of the State's Government. Of the three branches of government, the executive, the legislative, and the judicial, the judicial branch is the weakest, *In re Megill*, 114 N. J. Eq. 604 (Ch. 1933). The court can neither adopt legislation nor administer it. The court has no more power to assess or to equalize taxes than the Legislature has to adjudge law suits. As Alexander Hamilton expressed it in *The Federalist*, "It [the judicial branch of our government] has no influence over either the sword or the purse." In the case of *State Board of Assessors* v. *Central R. R. Co.*, 48 N. J. L. 146, 287, 288 (E. & A. 1886), the court said that if the power to tax is exercised oppressively, the responsibility of the Legislature is not to the courts, but to the people by whom its members are elected.

The evidence in this case does not disclose any lack of ability nor unwillingness of the Bergen County Board of Taxation equitably to apportion the county taxes among the various taxing districts by a uniform rule. The county board has been following the advice of the Attorney General of New Jersey to the effect that county boards of taxation have no authority to equalize the aggregate of the personal property assessments among the various taxing districts of a county; and the evidence indicates that it is probably impossible for the county board to assess individually all the personal property in Bergen County within the time permitted by law and within its budgetary allowances.

We are living in an anxious world, and in a world of great uncertainty In order to prepare ourselves for whatever may be threatening us from without our nation; we must be strong within it. A just equalization of the already oppressive and constantly increasing burden of property taxes is more important to our welfare and security than the goods and services purchased with the money collected through the taxation of property, because the property assessed for taxation is the source of most of our public goods and services. An unequal valuation will eventually dry up the headwater springs which feed the property tax stream. When the taxes levied on property exceed all benefits of ownership, the property is abandoned. There is an old proverb which says when we drink of the stream, we should remember the spring. Taxation is not as some vast river of unfailing source.

For the foregoing reasons, and in the hope that it may accomplish some good, I will enter a judgment peremptorily commanding and strictly enjoining the Bergen County Board of Taxation to equalize the assessed value of all taxable real and personal property of Bergen County on the basis of its true value, so that each taxing district shall bear its full, equal and just share of the Bergen County taxes; and I will further order the said Board of Taxation to do everything required or permitted by law which may be necessary in order to secure the taxation of all taxable real and personal property in Bergen County equally and at its true value so that all taxable property in Bergen County, real and personal, shall bear its full, equal and just share of taxes. I will enter this order although recognizing the difficulty involved should it become necessary to bring a proceeding to enforce it. I will also enter this order even though it has no force outside of Bergen County, and, therefore, it will have very little effect on the condition which is prevalent throughout the State of New Jersey.

Opinions and Judgments of Superior Court, Law Division.

Judgment of April 29, 1960.

SUPERIOR COURT OF NEW JERSEY,

LAW DIVISION.

VILLAGE OF RIDGEFIELD PARK, a municipal corporation of the State of New Jersey, *et als.*, Plaintiffs, *vs.* BERGEN COUNTY BOARD OF TAXATION, *et als.*, Defendants.	Civil Action. Judgment.

This matter being opened to the Court by Morrison, Lloyd & Griggs (William R. Morrison appearing), attorneys for the plaintiffs, and the Court having filed its written Opinion on April 12, 1960, containing its findings of fact and conclusions of law, and having determined that the Bergen County tax apportioned to the Village of Ridgefield Park for the year 1959 is unconstitutional and void for the reasons set forth in the aforesaid Opinion; that the Bergen County Equalization Table for the year 1959 insofar as it affects the Village of Ridgefield Park should be set aside as unconstitutional and void; that the Bergen County Table of Aggregates for the year 1959 insofar as it affects the Village of Ridgefield Park should also be set aside as unconstitutional and void; and that the Bergen County taxes apportioned to the Village of Ridgefield Park for the year 1959 insofar as they affect the Village of Ridgefield Park should be set aside as unconstitutional and void;

NOW, THEREFORE, it is on this 29th day of April, 1960, ORDERED AND ADJUDGED that:

1. The Bergen County tax apportioned to the Village of Ridgefield Park for the year 1959 be and the same is hereby adjudged and decreed to be unconstitutional and void;

2. The Bergen County Equalization Table for the year 1959 insofar as it relates to the Village of Ridgefield Park be and the same is hereby adjudged and decreed to be unconstitutional and void;

3. The Bergen County Table of Aggregates for the year 1959 insofar as it affects the Village of Ridgefield Park be and the same is hereby adjudged and decreed to be unconstitutional and void;

4. The Bergen County taxes apportioned for the year 1959, together with all things touching and concerning the same insofar as they affect the Village of Ridgefield Park be and the same are hereby set aside as unconstitutional and void; and

BE IT FURTHER ORDERED AND ADJUDGED that the defendant, Charles B. Bleasby, County Treasurer, be and he is hereby ordered to refund to the Tax Collector of the Village of Ridgefield Park the following sums of money:

First quarter of 1959 County taxes	$ 32,986.41
Second quarter of 1959 County taxes	32,986.42
Third quarter of 1959 County taxes	63,005.09
plus penalty interest	673.69
Fourth quarter of 1959 County taxes	63,005.10
and	
The added assessments of County taxes for the year 1959	255.87
	$192,912.58

It is hereby determined that there is no just reason for delay in entering this judgment, and I hereby direct it to be entered.

s/ DONALD M. WAESCHE

DONALD M. WAESCHE
J. S. C.

Order of May 23, 1960.

CHARLES B. BLEASBY, County Treasurer of the COUNTY OF BERGEN, Plaintiff, *vs.* HAROLD J. JONES, Collector-Treasurer, and the BOARD OF COMMISSIONERS of the VILLAGE OF RIDGEFIELD PARK, Defendants.	Civil Action.

This matter being opened to the Court by Morrison, Lloyd & Griggs (William R. Morrison appearing), attorneys for the defendants, in the presence of Milton T. Lasher, attorney for the plaintiff, on application to fix the terms and form of final judgment to comply with the Opinion of this Court filed April 12, 1960 in the matter of the *Village of Ridgefield Park, et als.* vs. *Bergen County Board of Taxation, et als.*, Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-9321-58 P. W.; and the Court having listened to the arguments of respective counsel and considered the same, and being of the opinion that this matter involves the same facts and law and subject matter, *i.e.*, the validity of the Bergen County tax apportioned to the Village of Ridgefield Park for the year 1959, and that it therefore should be consolidated with the case of the *Village of Ridgefield Park, et als.* vs. *Bergen County Board of Taxation, et als.*, Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-9321-58 P. W., so that both matters may be reviewed by the Supreme Court of this State at the same time; and the Court being of the further opinion that final judgment should be entered in this matter so that appeal or certification may be had;

NOW, THEREFORE, it on this 23rd day of May, 1960, ORDERED that the suit of *Charles B. Bleasby, County Treas-*

urer of the County of Bergen vs. *Harold J. Jones, Collector-Treasurer, and the Board of Commissioners of the Village of Ridgefield Park,* Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-16939-58 P. W., be and the same is hereby consolidated with the suit of the *Village of Ridgefield Park, et als.* vs. *Bergen County Board of Taxation, et als.,* Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-9321-58 P. W.; and

It is FURTHER ORDERED that—

A. The Complaint of the plaintiff be and the same is hereby dismissed; and

B. A judgment be and the same is hereby entered on the Counterclaim in favor of the defendants and against the plaintiff declaring and adjudging that—

1. The Bergen County tax apportioned to the Village of Ridgefield Park for the year 1959 be and the same is hereby adjudged and decreed to be unconstitutional and void;

2. The Bergen County Equalization Table for the year 1959 insofar as it relates to the Village of Ridgefield Park be and the same is hereby adjudged and decreed to be unconstitutional and void;

3. The Bergen County Table of Aggregates for the year 1959 insofar as it affects the Village of Ridgefield Park be and the same is hereby adjudged and decreed to be unconstitutional and void; and

4. The Bergen County taxes apportioned for the year 1959, together with all things touching and concerning the same insofar as they affect the Village of Ridgefield Park be and the same are hereby set aside as unconstitutional and void.

/s/ DONALD M. WAESCHE,
J. S. C.

APPENDIX C.

Opinion of Supreme Court of New Jersey.

SUPREME COURT OF NEW JERSEY.

CITY OF PASSAIC, a Municipal corporation,
Petitioner-Appellant,

v.

PASSAIC COUNTY BOARD OF TAXATION AND DIVISION OF TAX APPEALS, Department of the Treasury,
Respondents-Respondents.

Argued November 23, 1959—Decided January 25, 1960.

Mr. WILLIAM N. GURTMAN argued the cause for appellant.

Mr. THEODORE I. BOTTER, Deputy Attorney General, argued the cause for respondents, Passaic County Board of Taxation and Division of Tax Appeals, Department of the Treasury (MR. DAVID D. FURMAN, Attorney General, attorney).

The opinion of the court was delivered by WEINTRAUB, C. J.

The City of Passaic attacks the apportionment of the cost of county government among the municipalities for the year 1956. It urges the statute does not authorize the inclusion of the assessed value of personal property in the apportionment basis. It adds that if this view be rejected the statute is unconstitutional. The county board found against the city and the Division of Tax Appeals affirmed. On our motion we certified the city's further appeal to the Appellate Division before it was considered there.

The city complains that whereas the aggregates of real property as returned by the local assessors are equalized at full true value by the county board under R. S. 54:3-17 to 19, no such process is provided with respect to personal property. Thus the municipality which is more diligent than others in reaching taxable personalty or uses a higher percentage of true value is penalized in its share of the cost of county government. For this reason, it urges the aggregate assessments of personal property should be disregarded. However, it seems equally clear that upon the city's approach the advantage would run to the taxpayers of municipalities with the greater amount of personal property.

If the Legislature intended both real and personal property to be taxed for county purposes, it would be odd to disregard entirely the valuations of personalty and to require personalty to pay on the substantially unrelated basis of the valuation of real property in the municipality. The uniform practice has been to tax both classes of property for county purposes, and if the statute so requires, it is strong evidence against the city's position. That the statute does subject personal as well as real property to county taxation is inescapable from a mere reading of chapter 4 of Title 54 (R. S. 54:4-1 *et seq.*) See also R. S. 54:3-13. Indeed the city does not suggest otherwise.

The provisions dealing with apportionment of the county tax quite plainly require personal property to be included in the basis of apportionment. The assessor files with the county board his list and a duplicate thereof containing the assessment of all taxable real and personal property. N. J. S. A. 54:4-12. The county board may make certain revisions, N. J. S. A. 54:4-47, and thereupon, it is provided in N. J. S. A. 54:4-48:

> "The county board of taxation shall enter all changes or additions on the various tax lists and duplicates, and, upon ascertaining the total amount

> of tax to be raised, fix and adjust the amount of state school, state and *county* tax to be levied in each taxing district in the county *in proportion to the respective values thereof* [*i. e.* the values of real and personal property on the lists], and the amount to be levied in each taxing district for local purposes as certified to it. * * *" (Emphasis added.)

N. J. S. A. 54:4-49, as it read for the tax year here in question, provided specifically that "in apportioning the amount of money to be raised in the various taxing districts for state, state school or *county* purposes," the county board, after "having revised, corrected and equalized the assessed value of *all* the property in the respective taxing districts," shall make certain deductions, and thereupon "the *total* valuations" as ascertained after such revisions of the assessment lists and deductions therefrom "shall form the basis for the apportionment of State, State school or *county* taxes." L. 1956, c. 93, §2. (Emphasis added.) The provisions of N. J. S. A. 54:4-52 relating to the table of aggregates to be prepared by the county board follow and implement the same thesis.

Hence there is no doubt that the aggregates of personalty were required to be included in the apportionment valuation for the year 1956.

N. J. S. A. 54:4-49, the apportionment section, was amended subsequent to the county board's work for the year 1956. L. 1957, c. 8, §1. Although the amendment is not involved in this case, we think it desirable to set at rest any question as to whether the amendment operated to exclude personal property from the apportionment valuation. The statement accompanying the bill which became *Chapter* 8 discloses no such purpose. Rather the stated object was to provide that overpayments and underpayments by a taxing district with respect to county costs and other common burdens shall be adjusted on the basis of the actual dollar amount rather than by adjustment of the aggregate ratables,

the statement pointing out that the latter method may result in a district receiving substantially more or less than the dollar amount it overpaid or underpaid.

The amendment reads as follows with respect to the "apportionment valuation":

> "(a) Except as to any State tax at a fixed rate provided for in sections 54:4-50 and 54:4-51 of this Title, each county board of taxation, after having received the tax lists and duplicates of the assessors and having revised and corrected the same *and having equalized the aggregate valuations of all the real property in the respective taxing districts as required by sections* 54:3-17 to 54:3-19 *of the Revised Statutes,* shall, after making adjustments for the debits and credits hereinafter mentioned, apportion the amount to be raised in the respective taxing districts for State, State school, county and free county library purposes and for purposes of regional and consolidated school districts and school districts comprising 2 or more taxing districts, *on the basis of the total valuation so ascertained for each taxing district.* The total valuation of each taxing district, so ascertained, shall be known as the 'apportionment valuation.'" (Emphasis added.)

The pertinent phrases are the two we have italicized. The first replaced the phrase "equalized the assessed value of all the property" in the earlier provision. The reason is clear enough. R. S. 54:3-17 requires the county board to ascertain the general ratio or percentage of full value at which the real property of each taxing district is assessed on the lists submitted to it and to prepare an equalization table wherein the full true value of the real property in all of the districts will appear. R. S. 54:3-19 provides the valuations of real property as thus equalized "shall be deemed to be the true valuation of such property in computing the total ratables of each district for all apportionments of

county and state taxes, charges or distribution of moneys." Hence the first italicized phrase in the 1957 amendment is a mere cross-reference to R. S. 54:3-19 and does not bespeak a purpose to limit "total valuation" in the second italicized phrase to the equalized aggregates of real property.

Although there is no ambiguity or doubt inviting recourse to practical construction, *Lane* v. *Holderman*, 23 N. J. 304, 318 (1957), it may be noted that the city concedes the county boards have uniformly construed the statute as we have. See *City of Passaic* v. *Kingsley*, 47 N. J. Super. 265 (App. Div. 1957), certif. denied 26 N. J. 170 (1958). This construction was at least assumed to be correct in *City of Passaic* v. *Passaic County Board of Taxation*, 18 N. J. 371, 380 (1955). See also *Borough of Totowa* v. *Passaic County Board of Taxation*, 5 N. J. 454 (1950). Additionally, it is pertinent to add that in directing the preparation of the equalization table for use in the distribution of state aid to schools, a subject kindred to the matter of taxation, *City of Passaic* v. *Passaic County Board of Taxation, supra* (18 N. J. at page 385), the Legislature directed the inclusion of both real and personal property, requiring real property to be equalized at true value and personal property to be taken as assessed. L. 1954, c. 86; N. J. S. A. 54:1-35.1 *et seq.*

Under existing circumstances, there is nothing arbitrary or invidious in providing for equalization of the aggregates of real property while omitting similar treatment of the aggregates of personal property. The failure of assessors to achieve the legislative goal of assessment at true value has long been notorious. With respect to real property, an equalization technique is feasible since the *quantum* of real property is readily ascertainable and sales and appraisal data are procurable. Basic information thus existing for an acceptable finding of the average ratio or percentage of true value at which real property is assessed locally, a device could be fashioned to compensate for the assessor's failure and thereby to support the legislative

policy of equality. *Borough of Carteret* v. *Division of Tax Appeals*, 40 N. J. Super. 439, 465 (App. Div. 1956), certif. denied *Borough of Sayreville* v. *Division of Tax Appeals*, 22 N. J. 224 (1956). On the other hand, comparable information is not readily available to the county board with respect to personalty. The Legislature accordingly limited the equalization process to the area of its usefulness. The problem of equalization of personal property has not gone unnoticed. *Ninth Report of the Commission on Tax Policy*, p. 111 (1958). The provision for equalization of only the aggregates of real property does not bespeak legislative approval of the assessor's failure to obey its mandate that personal property be assessed at true value. Rather, it is fair to assume, the Legislature has not found an effective antidote within the framework of the existing tax structure.

What we have just said disposes of any conceivable constitutional objection. The Legislature need not refrain from achieving a measure of equality where it can merely because its technique is not serviceable throughout the apportionment basis. Absolute equality in taxation is a practical impossibility. *Borough of Totowa* v. *Passaic County Board of Taxation, supra* (5 N. J., at page 464). As we have said, the inequality of which the city complains is not the product of the statute. Rather it is the product of the failure of assessors to comply with the legislative mandate. If it be assumed the resulting inequality in operation presents a constitutional problem, it is sufficient to say the appropriate remedy is one addressed to the underlying failure, and that remedy is available, as we have this day held, *Village of Ridgefield Park* v. *Bergen County Board of Taxation*, 31 N. J. 420, in the form of an action to compel the local assessors to discharge their duties.

The judgment is accordingly affirmed.

For *affirmance*—Chief Justice Weintraub, and Justices Burling, Francis, Proctor, Hall and Schettino—6.

For *reversal*—None.

APPENDIX D.

New Jersey Statutes.

N. J. S. A. 54:3-13:

"Each county board of taxation shall secure the taxation of all property in the county at its true value, in order that all property, except such as shall be exempt by law, shall bear its full, equal and just share of taxes." N. J. L. 1906 c. 120, p. 211 §2, Suppl. to N. J. L. 1903 c. 208, p. 394.

N. J. S. A. 54:3-15:

"The members of each county board, in carrying into effect the provisions of this title, shall view and inspect, so far as possible in all cases, the various assessed properties in the various taxing districts in the county, and make their revision and correction after such view and inspection. The board shall meet from time to time as it shall deem proper." N. J. L. 1906 c. 120, p. 211 §3, Suppl. to N. J. L. 1903 c. 208, p. 394.

N. J. S. A. 54:3-17:

"Each county board of taxation shall annually ascertain and determine, according to its best knowledge and information, the general ratio or percentage of full value at which the real property of each taxing district is assessed according to the tax lists laid before the board. It shall prepare an equalization table showing the assessed valuation of the real property in each district, the ratio or percentage, if any, by which the assessed valuation should be increased or decreased in order to correspond to true value, and the true value of the real property within the district as determined by it. A copy of the table shall be mailed to the assessor of each district, and be posted at the courthouse, at least

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one week before the hearings provided for in section 54:3-18 of this title." N. J. L. 1934 c. 191 p. 465 §1 Suppl. to N. J. L. 1918 c. 236 p. 847.

N. J. S. A. 54:3-18

"The county board of taxation in each county shall meet annually on January twenty-fifth for the purpose of equalizing the assessments of real property between the several taxing districts of the county. At the meeting a hearing shall be given to the assessors and representatives of the governing bodies of the various taxing districts for the purpose of determining the accuracy of the ratios and true valuations of property as shown in the equalization table, and the board shall confirm or revise the table in accordance with the facts. The hearings may be adjourned from time to time but the equalization shall be completed before March tenth. At the first hearing any taxing district may object to the ratio or valuation fixed for any other district, but no increase in any valuation as shown in the table shall be made by the board without giving a hearing, after three days' notice, to the governing body of the taxing district affected." N. J. L. 1934 c. 191, p. 465 §2, Suppl. to N. J. L. 1918 c. 236, p. 847.

N. J. S. A. 554:3-19

After the equalization table is finally confirmed by the board, the valuations of real property in each district as equalized shall be deemed to be the true valuation of such property in computing the total ratables of each district for all apportionments of county and state taxes, charges or distribution of moneys. A certified copy of the equalization table as confirmed shall be transmitted to the state tax commissioner, the state board of tax appeals, the state comptroller and each

taxing district in the county. N. J. L. 1934 c. 191, p. 465 §2, Suppl. to N. J. L. 1918 c. 236, p. 847.

N. J. S. A. 54:4-1

"All property real and personal within the jurisdiction of this State not expressly exempted from taxation or expressly excluded from the operation of this chapter shall be subject to taxation annually under this chapter at its true value, and shall be valued by the assessors of the respective taxing districts. • • • All property shall be assessed to the owner thereof with reference to the amount owned on October first in each year, and the person so assessed for personal property shall be personally liable for the taxes thereon." N. J. L. 1918 c. 236, p. 848 §202 as amended; N. J. L. 1942 c. 281, p. 1095 §1; N. J. L. 1943 c. 120, p. 353 §1; N. J. L. 1945 c. 163, p. 576 §1; N. J. L. 1946 c. 159, p. 722 §1; N J. L. 1946 c. 242, p. 857, §§1, 2; N. J. L. 1947 c. 413, p. 1287 §14.

N. J. S. A. 54:4-12

"The assessor shall annually ascertain by diligent inquiry and by the oath of persons to be assessed and others, according to the best of his ability and judgment, the names of all the persons taxable in his district and the true value of all the personal property therein. Every inhabitant of the taxing district, and every owner of personal property located in the district shall, on application of the assessor, forthwith render a true account of his name and tangible personal property, and the assessor shall set down in a list in proper columns the names, the value of the personal estate assessed to each one, the amount allowed by the assessor as a deduction from such value for exemptions, and the net value of personal property assessed to each

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person. * * *" N. J. L. 1918 c. 236, p. 853 §302, as amended, N. J. L. 1945, c. 163, p. 577 §4.

N. J. S. A. 54:4-23

"The assessor shall ascertain the names of the owners of all real property situate in his taxing district, and after examination and inquiry, determine the full and fair value of each parcel of real property situate in the taxing district at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract on October first next preceding the date on which the assessor shall complete his assessments, as hereinafter required." N. J. L. 1918 c. 236, p. 859 §401(1) as amended N. J. L. 1920 c. 356, p. 1069 §1; N. J. L. 1921 c. 324, p. 902 §1; N. J. L. 1927 c. 308, p. 576 §1; N. J. L. 1932 c. 181, p. 309 §1; N. J. L. 1942 c. 281, p. 1096 §3; N. J. L. 1943 c. 120, p. 353 §3.

N. J. S. A. 54:4-41

"The clerk of the board of chosen freeholders of each county, not later than the ninetieth day after the beginning of each budget year, shall transmit to the county board of taxation a statement of the total amount appropriated by the board of chosen freeholders to be raised for current expenses, debt, and interest, public works and for all other county purposes, and all amounts otherwise required by law to be raised by taxation in that year for county purposes. The county board shall apportion the tax among the taxing districts as provided in this chapter." N. J. L. 1918 c. 236, p. 864, §504 as amended; N. J. L. 1933 c. 266, p. 712, §2; N. J. L. 1942 c. 316, p. 1151 §1.

N. J. S. A. 54:4-46

"Upon the filing of the assessment lists and duplicates by the assessors with the county board of taxa-

tion, the board shall meet for the purpose of examining, revising and correcting the tax lists and duplicates. Any assessor shall attend before the board at such time and place as it may direct, and shall, under the direction and supervision of the board, make up and prepare corrected tax lists and duplicates." N. J. L. 1918 c. 236, p. 866, §507.

N. J. L. 54:4-47

"The county board may adjourn from time to time in the discharge of his duties, and may, after investigation, revise, correct and equalize the assessed value of all property in the respective taxing districts, increase or decrease the assessed value of any property not truly valued, assess property omitted from any assessment, as provided by law, at its true value, and in general do everything necessary for the taxation of all property in the county equally and at its true value." N. J. L. 1918 c. 236, p. 866, §507, as amended, N. J. L. 1947 c. 413, p. 1287, §15.

N. J. S. 454:4-48

"The county board of taxation shall enter all changes or additions on the various tax lists and duplicates, and, upon ascertaining the total amount of tax to be raised, fix and adjust the amount of State school, State and county tax to be levied in each taxing district in the county in proportion to the respective values thereof, and the amount to be levied in each taxing district for local purposes as certified to it. The county board of taxation shall also apportion the amount to be levied in each taxing district for purposes of consolidated and regional school districts and school districts comprising 2 or more taxing districts. It shall cause each assessor to enter in appropriate col-

umns upon the tax lists and duplicates for his respective taxing district the net corrected value assessed to each person for both real and personal property, and to enter the addition of the items of each column at the foot thereof, on every page, the rates per dollar, which shall be such as according to the valuation on the duplicate will be sufficient to produce the sum required, and to extend on the duplicates the amount of tax computed on each assessment at that rate." N. J. L. 1918 c. 236 p. 866 §507 as amended N. J. L. 1956 c. 93, p. 188 §1.

N. J. S. A. 54:4-49

"(a) Except as to any State tax at a fixed rate provided for in section 54:4-50 and 54:4-51 of this Title, each county board of taxation, after having received the tax lists and duplicates of the assessors and having revised and corrected the same and having equalized the aggregate valuations of all the real property in the respective taxing districts, as required by sections 54:3-17 to 54:3-19 of the Revised Statutes, shall after making adjustments for the debits and credits hereinafter mentioned, apportion the amount to be raised in the respective taxing districts for State, State school, county and free county library purposes and for purposes of regional and consolidated school districts and school districts comprising 2 or more taxing districts, on the basis of the total valuation so ascertained for each taxing district. The total valuation for each taxing district, so ascertained, shall be known as the "apportionment valuation."

(b) The amount to be apportioned among the respective taxing districts shall be the amount to be raised for the purposes specified in subsection (a), plus or minus the difference between the total debits and

total credits of the taxing districts affected, determined as provided in subsection (c). The net amounts respectively to be raised, after making allowance to the affected districts for the debits and credits, shall be equivalent to the amount required for each of the purposes specified in subsection (a).

(c) . . .

(d) So that there shall be uniformity of application and treatment under this section in all of the counties, the Director, Division of Taxation, shall issue regulations for the guidance of the county boards of taxation in the determination of the apportionment valuations, the amounts to be apportioned and the amounts of the debits and credits." N. J. L. 1918 c. 236, p. 869, §510 as amended, N. J. L. 1942 c. 79, p. 321, §1; N. J. L. 1956 c. 93, p. 189, §2; N. J. L. 1957 c. 8, p. 19, §1.